

DEC 31 2007

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY



In the Matter of:

Ross Estates, LLC,
7924 Jessie's Way
Hamilton, Ohio 45011

:
:
:

Director's Final Findings and Orders

Respondent

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 12/31/07

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ross Estates, LLC (Respondent), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent Ross Estates, LLC is the developer of residential housing site located on Black Road, approximately one half mile south of Ross-Hanover Road, Ross Township, Butler County, Ohio, hereinafter known as "the Site."
2. In December of 2003, an Ohio EPA representative identified on the site a Class II headwater intermittent or perennial stream ("the Stream") that could be impacted by future construction of houses. The waters in the Stream were and are "waters of

the state" pursuant to R.C. § 6111.01. The Stream flows into an unnamed tributary of Indian Creek, the latter being an exceptional warmwater habitat stream. The Ohio EPA representative informed a representative of Respondent that impacts to over 300 feet of an ephemeral stream or 200 feet of an intermittent or perennial stream would require a state 401 water quality certification.

3. In approximately May or June of 2004, Respondent filled in and impacted approximately 1000 feet of the Stream. Respondent relocated the Stream channel approximately 200 feet to east, along the eastern boundary of the development, thereby making additional area available for development and commercial sale as residential lots.
4. At the time that Respondent placed fill material in and polluted the Stream in May and/or June of 2004, Respondent had no certificate or permit from the Director authorizing the placement of fill material into the Stream, and had no other legal authorization, namely a Clean Water Act 404 permit, authorizing them to place the fill material into the Stream.
5. ORC § 6111.04(A) prohibits any person from causing pollution or placing industrial waste or other wastes in a location where the wastes cause pollution of waters of the state. ORC § 6111.01(C) defines "industrial waste" as any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade or business. ORC § 6111.01(D) defines "other waste" as, among other things, fill material. ORC § 6111.01(C) defines "pollution" as the placing of industrial waste or other wastes in any waters of the state. ORC § 6111.04(A) further provides that its prohibition "does not apply if a person holds a valid, unexpired permit or renewal of a permit governing the causing of pollution or placement of waste into waters of the state.
6. ORC § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code. Each day of violation is a separate offense.
7. In violation of ORC § 6111.04(A) and ORC § 6111.07(A), over a number of days in May and or June of 2004, Respondent placed fill material in approximately 1000 feet of the Stream without a valid, unexpired permit or renewal of a permit.
8. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall place no fill material in waters of the State of Ohio without first obtaining authorization under a nationwide permit (or other appropriate permit) and without having first obtained a 401 water quality certification from the Director of Ohio EPA.
2. Respondent shall perform mitigation of the stream at the Site in accordance with the 401 water quality certification (Ohio EPA 401 Id 042134) attached to these Orders as Exhibit A; in accordance with the plans submitted by Respondent that are referenced in the 401 water quality certification; and in accordance with any 404 permit that may be needed. Within thirty days after the effective date of these Orders, Respondent shall also complete and file and record with the appropriate county office or offices a copy of an environmental covenant, a copy of which form is attached as Exhibit B, placing restrictions set forth in Exhibit B on the mitigated stream and stream corridor on the Site.
3. Respondent is jointly and severally liable to pay to the Ohio EPA Twenty Thousand Four Hundred Dollars (\$20,400) in settlement of the Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6111. Respondent shall pay Three Thousand Dollars (\$3,000.00) of this civil penalty by tendering an official check for that amount made payable to "Treasurer, State of Ohio" within thirty (30) days of the effective date of these Orders, to the following address:

Ohio EPA
Office of Fiscal Administration
Attn: Brenda Case
P.O. Box 1049
Columbus, Ohio 43216-1049

The official check shall be submitted together with a letter identifying the Respondent.

4. In lieu of paying the remaining Seventeen Thousand Four Hundred Dollars (\$17,400.00) of the full civil penalty amount described in paragraph 5 of these Orders, Respondent shall perform mitigation of the stream and bordering area on the property of Tom Study ("the Study Site") in accordance with the 401 water quality certification (Ohio EPA 401 Id 042134) attached to these Orders as Exhibit A; in accordance with the plans submitted by Respondent that are referenced in the 401 water quality certification; and in accordance with any 404 permit that may be needed. Within thirty days after the effective date of these Orders, Respondent shall also complete and file and record with the appropriate county office or offices a copy of an environmental covenant, a copy of which form is attached as Exhibit B, placing restrictions set forth in Exhibit B on the 14 acres that compromise the Study Site.

5. If Respondent fails to perform mitigation required in paragraph 4. of these Orders, Respondent shall immediately pay to the Ohio EPA the remaining \$17,400 of the civil penalty set forth in paragraph 3. of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the Site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
Columbus, Ohio 43215

Attn: Enforcement Coordinator

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

12/26/07
Date

IT IS SO AGREED:

Ross Estates LLC


Signature

12/19/07
Date

MARK SCHRAFFENBERGER
Printed or Typed Name

MEMBER
Title