

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

ACTIVE CITIZENS OF TWINSBURG, ET AL :  
: Appellants : Case No. EBR 773723-253724,  
: : :  
v. : : :  
: : :  
DONALD SCHREGARDUS, DIRECTOR OF : :  
ENVIRONMENTAL PROTECTION, ET AL. : : Issued on: March 5, 1998  
: : :  
Appellees. :

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

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Issued By:

ENVIRONMENTAL REVIEW APPEALS  
COMMISSION

Toni E. Mulrane, Chairman  
Julianna F. Bull, Vice-Chairman  
Jerry Hammond, Member

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- Get copy of decision  
where ERAC modified  
slightly

- Get name of all cases conferred re: activity.

This matter comes before the Environmental Review Appeals Commission ("Commission") upon an appeal filed by Active Citizens of Twinsburg ("ACT") and Rivers Unlimited ("RU"). In their October 30, 1996 appeal, ACT and RU contest the decision of the Director of the Ohio Environmental Protection Agency ("the Director", "OEPA", "the Agency") to issue a Section 401 Water Quality Certification to William C. Whitlatch & Co. ("Whitlatch").

The Commission convened a de novo hearing in this matter on July 7, 1997. Appellants were represented by E. Dennis Muchnicki, Esq., Dublin, Ohio. Appellee Whitlatch was represented by Keven Drummond Eiber, Esq. and Todd M. Musheff, Esq. of Brouse & McDowell, Appellee Director was represented by Assistant Attorneys General Robert J. Karl and J. Gregory Smith.

Based on the certified record and the evidence adduced at the de novo hearing, the Commission hereby issues the following Findings of Fact, Conclusions of Law and Final Order AFFIRMING the action of the Director.

FINDINGS OF FACT

1. Pursuant to state and federal law, before any fill material may be discharged into waters of the state, which include wetlands, one must first obtain both a Section 401 certification from the Ohio EPA and a Section 404 permit from the U.S. Army Corps of Engineers ("Corps"). (33 USC Sec. 1344; 33 USC Sec. 1341; OAC Sec. 3745-32-04.)

NW# 26

2. This process begins when an applicant files an application for the ~~404~~ <sup>what</sup> permit with the Corps. Upon receipt of the application, the Corps issues <sup>triggered</sup> a public notice regarding the proposed project along with a description of the <sup>401 in</sup> project. The notice also solicits comments regarding same. In Ohio, it is <sup>this case</sup> this notice and filing which triggers the state's 401 certification process. (Testimony Micacchion Vol. II, p. 54; O.A.C. Sec. 3745-32-04.)

3. In this case, the Corps published notice of an application from Whitlatch ("initial application") for a proposed development at Creekside Drive and Darrow Road in Twinsberg, Ohio, (hereinafter "Creekside project") on January 5, 1995. (Appellee's Exhibit 26; C.R. 7; Testimony Collins, Vol. I, p. 120.)

4. The land for this project is generally located in the southeast quadrant of the city of Twinsberg, Ohio, and involves approximately 60 acres northeast of the intersection of State Route 91 (Darrow Road) and Interstate I-480. Tinkers Creek meanders through the parcel. (Appellee's Exhibit 4.)

5. From a regulatory perspective, Tinkers Creek lies within the Cuyahoga River Basin and has been assigned a designated use of warm water aquatic life habitat; that is, the Creek can be characterized as being typical of other streams in Ohio where one would expect to find a good mix of fish but no rare and sensitive species. (O.A.C. 3745-1-07; O.A.C. 3745-1-26; Testimony Rankin, Vol. III, p. 200.)

6. The parcel was acquired by Whitlatch in 1987, with an eye towards developing the site for regional retail development. Whitlatch testified that he was aware of the economic potential of the land as well as its physical

limitations at the time of purchase, and that he knew when he purchased the land that its development would take considerable time and money. (Testimony Whitlatch, Vol.I, p.38.)

7. Much of the site's commercial potential is due to Twinsburg's location southeast of Cleveland, Ohio, and north of Akron, Ohio. The proximity of the town to these two major metropolitan areas, as well as its connection to those areas by several major highways, in effect, makes Twinsburg a corridor community for those areas. (Appellee's Exhibits 3 and 4.)

8. The influence that Twinsburg's location could be expected to have on the growth of the city was acknowledged as early as 1973, when the city promulgated a comprehensive plan for the development of the Twinsburg area. This plan was subsequently updated in 1990. Among other things, the plan provided detailed recommendations regarding the future land use for the city. (Appellee's Exhibits 1 & 2.)

9. Specifically, the plan designates that the land proposed for the Creekside project be used for both retail service and public facilities. (Appellee's Exhibit 2, Map 2, Comprehensive Plan--1990; Testimony Whitlatch Vol. I, p. 33.)

10. Whitlatch proposed to develop his land in accordance with this plan. Towards that end, he began the process of obtaining the various regulatory permits required for the site's development. As noted above, one of the first submittals was to the Corps for a 404 permit, which, in turn, triggered the OEPA review for state 401 certification. (Testimony Micacchion, Vol. II, p. 56.)

11. Mr. Mick Micacchion, a Wetland Ecologist at the OEPA and former coordinator of the Agency's 401 Program, testified that he was the primary reviewer for the Creekside Center development project proposed by Whitlatch. As such, he reviewed all documents pertaining to the project. Among those documents were the Wetland Delineation of the site as well as comments from various other agencies including, but not limited to, the United States Fish and Wildlife Agency, the United States Environmental Protection Agency, and the Ohio Department of Natural Resources. (Testimony Micacchion, Vol. II, p. 51.) L.N.

12. The Creekside project presented the possibility of other water quality impacts; therefore, the application was also reviewed by other experts at the Agency. Edward T. Rankin, a biologist and zoologist by training, and an expert in developing and using biological criteria for stream assessment, was one such expert. (Testimony Rankin, Vol. III, pp. 152-165.) ( + habitat

13. After a review of this initial application and numerous visits to the site, the OEPA proposed to deny the application, based, in part, on its determination that the proposed stream relocation and subsequent development were not compatible with the warmwater habitat designated use of Tinkers Creek. The Agency also concluded that the relocation and subsequent development would violate water quality standards. The agency issued the proposed denial on May 12, 1995. (Testimony Micacchion, Vol. II, p 61.)

14. At this point, Whitlatch considered various options available to them regarding the Creekside project. One option was to incorporate the Agency's concerns and comments into a revised application. Towards this end,

Whitlatch contacted Biohabitats, Inc. ("Biohabitats"), a Maryland firm with expertise not only in successful stream relocation and restoration, but also in wetland mitigation activities. (Testimony Collins, Vol. I p. 124.)

15. Whitlatch retained Biohabitats to assess the stream in terms of its natural geometry, discharge and flow pattern. Keith Bowers, owner and President of the firm, and an expert in stream restoration, relocation and bioengineering employed the assessment information to produce the "Creekside Center Stream Relocation and Restoration Report." This report formed the basis for an amended 401 application (hereinafter the "amended application"), and was submitted to the Agency in November, 1995. Both the initial and amended applications proposed to relocate Tinkers Creek; however, the amended application proposed that the relocated stream mimic the natural meandering nature of the current creek and that habitat enhancement features, such as canopy cover and pools with riffles be installed. Further, Mr. Bowers testified that his report considered the entire corridor of the stream in designing the relocation because any development surrounding a stream corridor ultimately impacts the stream itself. (Appellee's Exhibits 11, 25 and 30; Testimony Bowers, Vol. II, p. 44.)

16. In fact, the amended application differed from the initial application in a number of ways. For example, in the amended application, the stream relocation was based on geomorphologic principles in accordance with the meandering nature of the stream, rather than placement merely for "convenience purposes". The amended plan promised to mitigate not only a larger area of wetlands, but also a higher quality of wetlands. Similarly,

the amended plan envisioned a 100 foot buffer of forested area for the stream channel. The amended plan offered an "intensive monitoring proposal" in terms of post construction stormwater management, a posted performance guarantee, and five year monitoring of the stream biota and habitat, chemical water quality, and the wetland hydrology. (State's Exhibit 2; Testimony Micacchion Vol. II pp. 63 et seq.; Testimony Rankin, Vol. III p. 218.)

17. Finally, and significantly, the amended application provided for a land donation of 34 acres of wooded land that would form a riparian corridor along both sides of the entire length of Tinkers Creek (existing and relocated) as it passes through the Creekside development. The record demonstrates that the use of such property would be limited by deed restrictions to conservation and passive recreation uses such as canoeing, hiking, fishing, and nature study which are consistent not only with the current character of the land but also with the envisioned use for the land as contained in the city's comprehensive plan. (Appellee's Exhibit 31; Testimony Micacchion, Vol.II, pp. 149-150.)

18. David Hartt, an architect with both experience and training in the field of city planning and development, and an expert in the area of land-use planning and land-use development, testified that the land donation was extremely important in terms of comprehensive planning. Specifically, it was Mr. Hartt's opinion that absent a deed restriction for conservation use, a "chipping away" at the undeveloped land contingent to the developed property would occur over time, with the ultimate result being that the entire area would eventually be developed. (Testimony Hartt Vol.III, pp. 100-125.)

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19. Flooding has long been a concern of many citizens in the area. The City of Twinsburg has adopted locally enforced flood reduction standards (based on the National Flood Insurance Program), and, in accordance with federal law, the city prohibits any new construction or development absent a demonstration from the developer that the proposed construction and development will not increase the flood levels in the community. (Appellant's Exhibits 12 and 17; State's Exhibit 1; Testimony Ferritto, Vol. IV, pp. 236 et seq.)

20. Because a portion of the Creekside project lies within the designated Federal Emergency Management Agency (FEMA) floodway for Tinkers Creek, the Whitlatch proposal included consideration of the impacts the Creekside project might have on area flooding. In fact, the FEMA flood management data for various storm events was evaluated using FEMA required models to determine the impact of the proposed project on flooding in and around the project site. The project parameters were also evaluated in terms of what impact those parameters might have on area flooding. (State's Exhibit 1; Appellee's Exhibits 15 and 16.)

21. Because Whitlatch anticipated that the proposed channelization and grade alterations would impact the flood profile elevations for the area, he initiated the process of requesting FEMA's approval for the changes associated with the Creekside project. Whitlatch received FEMA's approval to alter the flood plain but not decrease flood capacity in 1994. (Appellee's Exhibits 15, 17, 18, 20, and 21; Testimony Collins, Vol. I p. 154, 180; Testimony Topovsky, Vol. I., pp. 202 et seq.)

22. Mr. Stephen Topovsky, P.E., testified that he had been involved with Whitlatch in the Creekside project since its inception and that it had been his responsibility to model the effect that development and fill of the existing land would have on the flood holding capacity of the area. After studying the area, gathering data and simulating various rain events via computer modeling, it was Mr. Topovsky's opinion, as supported and demonstrated by evidence, that the Creekside property as developed would not negatively affect the flood holding capacity of the area. (Testimony, Topovsky, Vol. I, pp. 197, 207; Appellee's Exhibits 15, 16 and 17.)

23. In support of this evidence, Mr. Micacchion testified that he had, in part, based his recommendation on the fact that he had reviewed information from FEMA as well as from ODNR's Division of Water. It was his opinion that the public concerns about flooding in connection with this project were taken into account, and that the project would not result in any measurable upstream or downstream flooding. In sum, the evidence reflects that the flood holding capacity of the area will be maintained, in part, by creating the wetlands and creating a riparian corridor and by placing the retail development a specific distance from the creek. (Testimony Micacchion, Vol. II, pp 82-84.)

24. The general directive in Ohio is that existing water quality is to be maintained. Dredged or fill material removed or used in construction falls within Ohio's legal definition of pollution. Thus, any development which proposes to deposit dredge or fill material would be at odds with Ohio's antidegradation rule. [O.A.C. 3745-1-05; R.C. Section 6111.01(A); R.C. Section 6111.01(D); O.A.C. 3745-32-01(G).]

25. However, that rule provides that, in certain circumstances, after following prescribed procedures and making certain considerations, the Director may choose to allow the degradation of water quality. The Creekside project was such a circumstance, and the record demonstrates that the Director concluded that a lowering of the water quality of Tinkers Creek would occur as part of this project. (O.A.C. 3745-1-05; Appellee's Exhibit 33.)

26. Once such a determination is made and when authorizing an activity that would degrade waters which exceed water quality standards, O.A.C. 3745-1-05(B) requires that the OEPA comply with the public notice requirements set forth in 40 CFR Part 25. Specifically, 40 CFR 25.5(b) requires that the OEPA, among other things, publish notice of a public hearing at least forty-five (45) days before said hearing.

27. The record demonstrates that the Agency publicized and held the mandated public hearings to solicit comments on the application, the project, and the preliminary decision by the OEPA that the project would result in some degradation of the existing water quality of Tinkers Creek and the adjacent wetlands. (C.R. 9--Public Hearing Transcript 12/11/95; C.R. 17--Public Hearing Transcript 7/23/96.)

28. Mr. Rankin testified that the Agency concluded that the relocation of Tinkers Creek and the subsequent development project would not interfere with either the attainment of the applicable water quality standards or the Creek's ability to maintain its warmwater habitat designated use. Similarly, Mr. Micacchion testified that the Director determined that the stream's habitat, as well as its biological and physical integrity would show no

significant difference before and after construction of the project.

(Testimony Rankin, Vol. III, pp. 216 et seq.; testimony Micacchion Vol. II, pp. 144 et seq.)

29. In light of the above noted factors and considerations, and based upon the amended application which had been submitted in November, 1995, the Director issued a 401 Certification (Public Notice No. (B)94-512-10-A) to Appellee Whitlatch & Company for its proposed Creekside project on September 30, 1996. (Notice of Appeal.)

30. On October 30, 1996, Appellant ACT, a citizens group comprised of individuals who live or work in the Twinsburg, Ohio area, and Appellant RU, an organization of individuals dedicated to advocating water quality related issues, appealed this action to the Commission. (Notice of Appeal.)

#### CONCLUSIONS OF LAW

1. In determining a de novo appeal, the Commission must determine whether the action of the Director which is under appeal is unlawful or unreasonable. (ORC Section 3745.05.)

2. "Unlawful means that the action taken by the Director is not in accordance with law. "Unreasonable" means that the action is not in accordance with reason, or that it has no factual basis. Further, only when the evidence in the case yields no valid factual foundation for the action in question or that it was not in accordance with law, can the Commission declare the action under appeal to be unlawful or unreasonable. (Citizens Committee

to Preserve Lake Logan v Williams, 56 Ohio App. 2d 61 (1977.)

3. Appellee Whitlatch possessed both the burden of proceeding and the burden of proof at the hearing.

4. At the hearing, a significant amount of time and testimony was devoted to disputing the appropriateness of certain zoning issues surrounding the project. The Commission and the courts have consistently held that the enforcement of local zoning and the enforcement of environmental laws are discrete functions, and, further, that only the latter falls within the purview of the Director of the OEPA. [Southwest Montgomery County Environmental League, et al. v Schregardus Conclusions of Law 29-35, ERAC Case Nos. 573283-573286, Issued: March 26, 1997; City of Independence v Maynard, 25 Ohio App. 3d 20, 25 (Franklin County, 1985)

5. Specifically, in discussing this decision the court in City of Independence stated:

Determination of whether or not to grant or deny a permit to install a facility is predicated upon the impact of the proposed facility on the environment or public health. Zoning and pollution control are separate and distinct governmental interests, independently enforced and administered by different governmental entities. (Id., at 25.)

6. The dispute today is over pollution control, an interest within the Director's grant of authority. Accordingly, it is to this grant of authority that the Commission will direct its opinion.

7. Towards that end, the Commission notes that appellants do assign a number of environmental errors to the Director's decision to grant a 401 certification to Whitlatch. (Notice of Appeal.)

8. One assignment of error alleges an unlawful application of O.A.C. 3745-32-05 on the part of the Director. (Notice of Appeal, Assignment of Error 4.)

9. O.A.C. 3745-32-01 through O.A.C. 3745-32-07 contain the general regulatory guidance by which the Director is to evaluate 401 applications. Specifically, O.A.C. 3745-32-05 enumerates the criteria on which the Director is to base a decision to approve or disapprove a 401 application.

10. O.A.C. 3745-32-05 (A) prohibits the Director from granting a section 401 certification absent a determination that the discharges at issue: 1) will not prevent or interfere with the attainment or maintenance of applicable water quality standards; and 2) will not result in a violation of certain specified provisions of the Federal Water Pollution Control Act. [(O.A.C. 3745-32-05 (A).]

11. However, that same regulation explicitly provides the Director with several options regarding 401 applications:

- the Director may deny an application if he concludes that the discharge of dredged or fill material will result in adverse long or short term impact on water quality, or
- the Director may issue a 401 certificate with terms and conditions necessary to ensure compliance with the law, or
- the Director may require various forms of environmental testing on the part of the applicant either prior to issuance of the 401 certification or during construction of a project. [O.A. C. 3745-32-05(B)(C)(D).]

12. Mr. Micacchion testified that the 401 certification criteria had been met by the applicant and that special conditions had been placed on the certification in accordance with the authority granted in O.A.C. 3745-32-05. Both Mr. Micacchion and Mr. Rankin concluded that the project as put forth in

the amended application would not interfere with either the attainment of the applicable water quality standards or the creek's ability to maintain its warmwater habitat designated use. (Testimony Micacchion, Vol. II, pp.63-82; Appellee's Exhibits 31 and 32; State's Exhibit 2.)

13. The approval letter itself explicitly contains information regarding testing and monitoring of the Creek and the wetlands before, during and for at least five years following the project. (Appellee's Exhibit 33; State's Exhibit 2.)

14. It is the opinion of the Commission, based upon the evidence adduced at hearing, that the Director applied O.A.C. 3745-32-05 in accordance with law. The Commission hereby finds Appellants' Assignment of Error regarding O.A.C. 3745-32-05 not well taken.

15. Appellant also alleges that the Director improperly interpreted Ohio's antidegradation rule as set forth in O.A.C. 3745-1-05, and, further, that he failed to resolve all factual issues relating to this regulation as it pertains to the water use designations and the numerical criteria contained in O.A.C. 3745-1-07. Similarly, Appellants allege that the Director improperly applied O.A.C. 3745-1-07 in general. We disagree. (Notice of Appeal, Assignments of Error 1, 2 and 5.)

16. Ohio Administrative Code 3745-1-05 establishes a general rule that both existing instream uses as well as existing water quality be maintained and protected. In the instant case, that would mean that the Director not allow any activity in or around Tinkers Creek which would prohibit the Creek from maintaining its warmwater habitat designated use, or its numerical water

quality standards to support that use. (O.A.C. 3745-1-05 (A)(B))

17. Ohio Administrative Code 3745-1-05's general rule against degradation does allow for certain exceptions, however. Specifically, it provides that the Director may, after compliance with public notice and hearing requirements, and after due consideration of technical economic and social criteria, choose to allow a lowering of water quality in some instances. [(O.A.C. 3745-1-05(B).]

18. This project was such an instance. The record reflects that the Director, in fact, concluded that this project would at least temporarily lower the water quality of Tinkers Creek. Further, it appears from the record that he determined to authorize the project, and did so in accordance with the law. (Appellee's Exhibit 31; Testimony Micacchion Vol.II, pp. 80 et seq.)

19. Mr. Rankin testified that, in his opinion, the stream could be relocated in a manner that would not interfere with, or become injurious to, the existing use of Tinkers Creek. Similarly, Mr. Micacchion testified that he, too, determined that the project would be compatible with Ohio's water quality standards and that the warmwater habitat designated use of the creek would be maintained and that the quality of the stream would not be less after the relocation than before.(Testimony Rankin, Vol. III. p.214; Testimony Micacchion, Vol.II pp. 80-85.)

20. Again, the issuance letter itself acknowledges that the project will incorporate enhancement features in accordance with fluvial geomorphologic principles into the relocation of the creek. Further, it is

clear that any impacts on the creek due to construction will be actively minimized. Finally, the issuance explicitly provides that water quality in the relocated Creek will be the same or improved over pre-construction parameters. (Appellee's Exhibit 33; State's Exhibit 2.)

21. Mr. Micacchion testified that the Director based his decision to issue the 401 certification despite some lowering of water quality on a number of considerations. Among those considerations were the fact that the proposed development would lead to some increase in the local tax base, and provide employment in the area. Further, he testified that the land donation of significant size and import was consistent with the City of Twinsburg's attempt to develop a plan for riparian protection. (Testimony Micacchion, Vol. II, pp. 149 et seq.)

22. The record also demonstrates strict compliance with the notice and hearing requirements associated with the Antidegradation Rule. [(C.R. 9), (C.R. 17), (Testimony Micacchion Vol. II, p. 69).]

23. Thus, the Commission finds Appellants' Assignments of Error 1, 3 and 5, regarding the application of Ohio's anti-degradation directives, not well taken.

24. Finally, Appellants allege that the Director improperly applied O.A.C. 3745-1-04. Again, this Commission disagrees.

25. O.A.C. 3745-1-04, is generally referred to as the "free-from" regulation. This section directs that, to every extent practical, Ohio's waters shall be free from:

- Suspended solids;...
- Debris, oil scum and other floating materials entering the water

as a result of human activity...

- Materials entering the waters as a result of human activity...in such a degree as to create a nuisance;
  - Substances toxic or harmful to human, animal or aquatic life;
  - Nutrients in concentrations which create nuisance growth.
- (O.A.C. 3745-1-04.)

26. The record demonstrates that the approved project will not contribute any of these prohibited substances to Tinkers Creek. By way of general example, the issuance letter incorporates any number of stormwater management techniques into the project plans. Further, the project provides for a detailed sequencing of construction for the site intended to minimize stormwater problems. The channel design itself which incorporates canopy and vegetative cover into the design will help keep the waters of Tinkers Creek and the adjacent wetlands free from the matter delineated in O.A.C. 3745-1-04. (Appellee's Ex. 33.)

27. Finally, and perhaps most significantly, the land donation of 34 acres of green space and high quality wetlands provides further assurance in that regard. (Appellee's Exhibits 33 and 35; State's Exhibit 2.)

28. Thus, based upon the evidence and testimony adduced at the de novo hearing before the full Commission, it is the opinion of that Commission that applicant has proved its entitlement to the 401 certification as approved and issued by the Director.

29. Furthermore, based on the evidence and testimony offered in the instant matter, it is the opinion of the Commission that the Director acted both lawfully and reasonably in determining that Applicant had satisfied the criteria for that 401 certification.

30. For the foregoing reasons, the Commission finds that the issuance

of a 401 Certification to Appellant Whitlatch was a lawful and reasonable action of the Director, and should be AFFIRMED.

FINAL ORDER

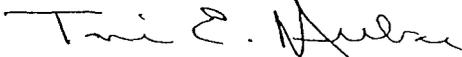
Based upon the foregoing discussion, the Commission hereby AFFIRMS the action of the Director of the Environmental Protection Agency. Any pending Motions in this matter are ruled moot.

The Commission, in accordance with Section 3745.06 of the Revised Code and Ohio Administrative Code 3746-13-01, informs the parties that:

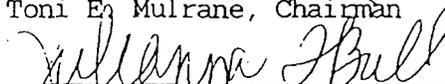
Any party adversely affected by an order of the Environmental Review Appeals Commission may appeal to the Court of Appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation to the court of appeals of the district in which the violation was alleged to have occurred. Any party desiring to so appeal shall file with the Commission a Notice of Appeal designating the order appealed from. A copy of such notice shall also be filed by the Appellant with the court, and a copy shall be sent by certified mail to the Director of Environmental Protection. Such notices shall be filed and mailed within thirty days after the date upon which Appellant received notice from the Commission by certified mail of the making of an order appealed from. No appeal bond shall be required to make an appeal effective.

Entered in the Journal of the  
Commission this 5<sup>th</sup> day  
of March, 1998.

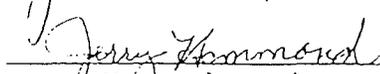
THE ENVIRONMENTAL REVIEW  
APPEALS COMMISSION



Toni E. Mulrane, Chairman



Julianna F. Bull, Vice-Chairman



Jerry Hammond, Member

FINDINGS OF FACT  
AND FINAL ORDER

-19-

Case No. EBR 773723-253724

COPIES SENT TO:

ACTIVE CITIZENS OF TWINSBURG  
RIVERS UNLIMITED  
DONALD SCHREGARDUS, DIRECTOR  
WHITLATCH & COMPANY  
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FINDING OF FACT  
AND FINAL ORDER

Case No. EBR 773723-253724

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER in ACTIVE CITIZENS OF TWINSBURG, ET AL. V. DONALD SCHREGARDUS, DIRECTOR OF ENVIRONMENTAL PROTECTION, ET AL., Case No. EBR 773723-253724 entered into the Journal of the Commission this 5<sup>th</sup> day of March, 1998.

  
Mary J. Oxley, Executive Secretary

Dated this 5<sup>th</sup> day of  
March, 1998, at Columbus, Ohio.