



State of Ohio Environmental Protection Agency

**Southeast District Office**

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Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

July 11, 2008

**Re: Athens County  
Nelsonville Bypass  
Storm Water Construction Activity  
Notice of Violation  
OGC01002\*AG**

Mr. T. Steve Williams  
ODOT District Construction Engineer  
338 Muskingum Drive  
Marietta, Ohio 45750

Dear Mr. Williams:

On June 27, 2008, I inspected the Nelsonville Bypass construction project. The purpose of my inspection was to determine the compliance of this site with the National Pollutant Discharge Elimination System (NPDES) permit for discharges of storm water associated with construction activity. The inspection was conducted under the provisions of Ohio's water pollution control statutes, Ohio Revised Code (ORC) Chapter 6111. As a result of the inspection, I have the following comments:

1. Part III.G.2.d.ii. of the permit requires that concentrated storm water runoff and runoff from drainage areas, which exceed the design capacity of silt fence or inlet protection, shall pass through a sediment settling pond. The sediment settling pond shall be sized to provide at least 67 cubic yards of storage per acre of total contributing drainage area. When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not co-mingled with sediment-laden runoff. The depth of the sediment settling pond must be less than or equal to five feet. The configuration between inlets and the outlet of the basin must provide at least two units of length for each one unit of width (> 2:1 length:width ratio). Sediment must be removed from the sediment settling pond when the design capacity has been reduced by 40 percent.

**There are numerous violations of this requirement throughout the site. The majority of the discharge points on the project do not possess proper storm water controls. Some of the larger discharge points do not possess any effective storm water controls at all. Evaluate the entire project for areas of non compliance and implement corrective actions within 14 days of receipt of this letter.**

2. Part III.G.2.d.i. of the permit requires that sediment control structures be functional throughout the course of the earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is re-stabilized.

**As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.**

**There are numerous violations of this requirement throughout the site. Install properly designed storm water controls within 14 days of receipt of this letter. This project could have been phased much better than it has been. Controls were in place during the first phase of the project and stormwater control locations are shown on the last phase of the project but major excavation phases were not accounted for.**

- a. **What will you be doing to ensure that this type of phasing problem does not occur in the future?**
  - b. **Ensure that the plan is updated to carry the project through all phases and regain compliance with the general construction stormwater permit.**
3. Part III.G.2.i. of the permit requires that at a minimum, procedures in an SWP3 shall provide that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The permittee shall assign qualified inspection personnel (those with knowledge and experience in the installation and maintenance of sediment and erosion controls) to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of the permit or whether additional control measures are required. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that those are operating correctly. Discharge locations shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

**Inspection records should have shown the inadequacies of storm water controls for some time. Based on the included inspection records, for the past 3 months, it does not appear that you have met the above requirement.**

**ODOT and its contractors have given a considerable amount of attention and paid a significant amount of money to become part of the highly regarded CPESC professional community. Over the past few years ODOT onsite project personnel have gradually shifted more and more responsibility onto the contractor. Intended or not this action has a detrimental effect on overall compliance with the stormwater program. ODOT employees seem to be reluctant to address stormwater control problems with the contractor.**

As I have stated before, I do not expect ODOT to require the contractor to "Install a sediment pond here" or "Install silt fence there." I only expect ODOT to be aware of problems onsite and inform the contractor they are not in compliance with the general construction stormwater permit in a certain drainage area and that compliance must be maintained.

Some ODOT personnel and the stormwater inspector for the contractor, on the Nelsonville Bypass project, have attended the CPESC training.

- a. Why didn't inspections and/or ordinary travel through the site show inadequacies of the stormwater controls?
- b. Why is ODOT allowing poor stormwater control implementation, planning, and phasing to occur?
- c. What does ODOT District 10 do onsite to ensure that all requirements in the General Construction Stormwater Permit are being met over the course of a project?

I would like to remind you that, no matter how much responsibility is put on the contractor through contractual agreements, ODOT is still the main stormwater permit holder and subject to enforcement. It is in ODOT's best interest to ensure that all problems are addressed immediately.

The level of detail in the inspection reports are poor.

- a. Use the attached Ohio EPA construction site inspection checklist, or something equivalent, in conjunction with the ODOT required checklist throughout the remainder of the project.
  - b. Since this is a recurring item I would like to ask that all ODOT projects utilize this checklist, or something equivalent, beginning immediately.
4. ORC 2921.13. (A) (3),(7), and (11) states:
- (A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:
    - (3) The statement is made with purpose to mislead a public official in performing the public official's official function.
    - (7) The statement is in writing on or in connection with a report or return that is required or authorized by law.
    - (11) The statement is made on an account, form, record, stamp, label, or other writing that is required by law.

**ORC 2921.13. (F) (1) states whoever violates division (A)(3), (7), (11), is guilty of falsification, a misdemeanor of the first degree.**

**Punishments for a misdemeanor of the first degree are as follows:**

- **Not more than one hundred eighty days in jail**
- **Not more than one thousand dollars fine**

I included the above statement of ORC 2921.13. in a letter to ODOT District 9 in 2006. At the time, the inspector had not completed CPESC training. After the investigation was complete I concluded that the inspector was not adequately trained and no criminal action was pursued against him.

**Currently, many ODOT and contractor employees have been CPESC trained and are working in the field daily. One could argue that the inspector on the Nelsonville Bypass project has been trained in stormwater management practices and that he signed a document required by law. Therefore, when I complete an inspection and evident violations of the permit have went unabated and have not been noted on inspection sheets I have no choice but to suspect that the inspector has willfully falsified the inspection form.**

1. **Inform all of your inspectors about the severity of not citing evident problems on inspection documentation.**
2. **I have decided not to pursue criminal enforcement procedures at this time. The reason for this decision is:**
  - a. **This is the first instance dealing with a CPESC trained inspector.**
  - b. **Overall, I do not believe ODOT or contractors are aware that this could be a criminal offense.**

I will immediately refer the next case of this type directly to our Office of Special Investigations for potential enforcement.

5. **Part V.G. of the permit states the following concerning signatory requirements.**

All NOIs, NOTs, SWP3s, reports, certifications or information either submitted to the director or that this permit requires to be maintained by the permittee, shall be signed.

1. **These items shall be signed as follows:**
  - a. **For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:**
    - i. **A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or**

- ii. The manager of one or more manufacturing, production or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
      - b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
      - c. For a municipality, State, Federal or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).
2. All reports required by the permits and other information requested by the director shall be signed by a person described in Part V.G.1 of this permit or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Part V.G.1 of this permit and submitted to the director;
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator of a well or well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  - c. The written authorization is submitted to the director.
3. Changes to authorization. If an authorization under Part V.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.G.2 of this permit must be submitted to the director prior to or together with any reports, information or applications to be signed by an authorized representative.

**Part V.H. Certification:**

Any person signing documents under this section shall make the following certification:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

**The current signatory process that is being utilized on inspection reports for the Nelsonville Bypass project does not meet the permit condition mentioned above. Not having a certification statement on inspection reports DOES NOT relieve the person signing the inspection report of criminal liability. Implement the correct certification statement immediately.**

6. Part III.G.2.b.i. (Table 2) of the permit requires that any area that will lie dormant for more than 21 days, but less than a year be stabilized within 7 days of the most recent disturbance.
  - a. **Assess the entire site for areas that do not meet temporary stabilization requirements. Seed and mulch any areas found to be deficient.**

I have attached pictures illustrating various violations of the permit and a list of specific areas that need to be addressed.

Within (30) days of receipt of this letter, please submit to me at this office a written letter addressing the above issues.

If there are any questions, please contact me at (740) 380-5277.

Sincerely,



Aaron Wolfe  
Storm Water Coordinator  
Division of Surface Water

AW/dh

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|--|---------------------------------|
| c: Ron Trivisonno, ODOT, Construction Admin. | c: Chris Cotton, DSW, SWDO      |
| c: S. Andy Rhodes                            | c: Dan Bogoevski, DSW, NEDO     |
| c: Mark Mann, DSW, CO                        | c: Lynette Hablitzel, DSW, NWDO |
| c: John Morrison, DSW, CO                    |                                 |
| c: Ken Mettler, SEDO                         |                                 |
| c: Harry Kallipolitis, DSW, CO               |                                 |