



State of Ohio Environmental Protection Agency

Northeast District Office

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September 23, 2009

Mr. Ben Ezinga
Sustainable Community Associates Ltd.
138 Hollywood St.
Oberlin, OH 44074

Mr. Carmen Fiorilli
Fiorilli Construction Inc.
1399 East 17th St.
Cleveland, OH 44114

Mr. D. Brian Bontrager
Bontrager Excavating Ltd.
11087 Cleveland Ave., NW
Uniontown, OH 44685

**RE: SUSTAINABLE COMMUNITY ASSOCIATES LTD, OBERLIN, LORAIN COUNTY,
OHR 000 124 198**

Dear Mr. Ezinga, Mr. Fiorilli, and Mr. Bontrager:

On July 24, 2009, Ohio EPA issued a Notice of Violation (NOV) letter in response to a verified complaint received by Ohio EPA on April 2, 2009, and addendum received on May 12, 2009. The complaint alleged violations of Ohio Revised Code (ORC) 6111 and ORC 3734.02(E) and (F) by Sustainable Community Associates Ltd. (SCA) and its construction management firm, Fiorilli Construction, Inc. for the East College Street project located in Oberlin, Ohio. The July 24, 2009 NOV letter was issued due to non-compliance with ORC 6111 and the NPDES permit for the site. The NOV letter also included a section entitled Hazardous Waste Program Issues and requested additional information.

In response to the July 24, 2009 NOV, Ohio EPA, Division of Hazardous Waste Management received additional information on July 1, 2009 (soil and water manifests from March and June 2009); August 7, 2009 (response on behalf of SCA); August 10, 2009 (response on behalf of Fiorilli Construction, Inc.); August 24, 2009 (response on behalf of Bontrager Excavating Ltd.); and August 31, 2009 (response on behalf of Bontrager Excavating, Ltd.).

Upon review of this documentation, Ohio EPA has determined that SCA, Fiorilli Construction and Bontrager Excavating are in violation of the following hazardous waste regulation:

1. **Ohio Administrative Code (OAC) rule 3745-52-11, Waste Evaluation:** Any person who generates a waste must evaluate that waste to determine if it is a hazardous waste in accordance with the criteria set forth in OAC Chapter 3745-51.

SCA, Fiorilli Construction, and Bontrager Excavating failed to adequately evaluate the spoils (i.e., excavated soil) and contaminated water that were generated at the facility, in accordance with OAC Chapter 3745-51.

As mentioned in Ohio EPA's July 24, 2009 NOV, contaminated soils and liquids were excavated and transported to PETRO Environmental, LLC in March 2009 and June 2009. As documented by information submitted on behalf of SCA, the soils from this area were initially sampled in-situ for petroleum related contaminants and then excavated, managed and shipped off site as petroleum contaminated soil and water. Please note that if it was your intent to manage this media under the petroleum-contaminated media and debris exclusion under OAC rule 3745-51-04(B)(10), be advised that the waste stream must still be evaluated for hazardous waste characteristics D001 through D017 per OAC rules 3745-51-21 through 3745-51-24, including ignitability, corrosivity, reactivity, metals and pesticides. For additional information, U.S. EPA has issued interpretative letters regarding petroleum contaminated media, which can be found at:
[http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/8600217256DF77FB8525670F006BE468/\\$file/11569.pdf](http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/8600217256DF77FB8525670F006BE468/$file/11569.pdf) and at
[http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/6579AA1EB0A055718525670F006BC990/\\$file/13409.pdf](http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/6579AA1EB0A055718525670F006BC990/$file/13409.pdf)

As also mentioned in Ohio EPA's July 24, 2009 NOV and based on information submitted on behalf of SCA, Fiorilli Construction, and Bontrager Excavating, other soils have also been shipped off site between February 2009 and August 2009. SCA, Fiorilli Construction, and Bontrager Excavating failed to evaluate these wastes to determine if they were hazardous. More specifically, SCA, Fiorilli Construction, and Bontrager Excavating failed to submit documentation indicating where these materials were generated, how they were evaluated in accordance with OAC chapter 3745-51, and how they were managed prior to their final disposal at the properties listed below.

- A. State Route 303 (parcel # 14-00-075-000-026), Pittsfield Township, Lorain County
- B. 4674 Wenz Road, Clarksfield Township, Huron County
- C. 45250 Hamilton Road, New Russia Township, Lorain County
- D. 46071 Merriam Road, Pittsfield Township, Lorain County
- E. 19566 State Route 58, Wellington Township, Lorain County
- F. 3561 Downing, Westlake, Cuyahoga County
- G. 45444 East Hamilton Road, New Russia Township, Lorain County (alleged by verified complaint)

To abate this violation, SCA, Fiorilli Construction, and Bontrager Excavating must submit waste evaluation information for each of the above mentioned soils and if determined to be hazardous, indicate how the waste was managed on-site, and where it was disposed/managed.

Please note the following when addressing this violation. Per OAC rule 3745-52-11, the generator must determine if waste is excluded, listed or characteristic hazardous waste. (Ohio EPA does recognize that there is not sufficient evidence to indicate that the soil and water would be a listed hazardous waste.) Therefore, the generator must determine if the waste exhibits a hazardous characteristic as identified in OAC rules 3745-51-21 to 3745-51-24. This can be accomplished by either sampling and analyzing the waste according to the test methods set forth in OAC rules 3745-51-21 to 3745-51-24 or applying knowledge of the hazardous characteristic(s) of the waste in light of the operations conducted at the property. This latter waste evaluation method is often referred to as "generator knowledge" and is discussed further in the enclosed DHWM Guidance Document titled, Use of Generator Knowledge In Complying with OAC rule 3745-52-11, Hazardous Waste Evaluation. If an adequate waste evaluation cannot be made based on generator knowledge alone prior to excavation, then Ohio EPA encourages SCA, Fiorilli Construction, and Bontrager Excavating to contact Ohio EPA prior to sampling and analyzing the waste at its current location to ensure that representative samples are collected and that the analysis includes all applicable hazardous constituents.

The above violation must be immediately addressed and all of the above requested documentation must be submitted to Ohio EPA within 30 days of receipt of this letter. You may find copies of the hazardous waste rules and other information on Ohio EPA's web page at: <http://epa.ohio.gov/dhwm>.

Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve SCA, Fiorilli Construction, and Bontrager Excavating from having to comply with all applicable regulations.

Should you have any questions, please contact me at (330) 963-1141.

Sincerely,



Shannon Ryan
Division of Hazardous Waste Management

SR:ddw

Enclosure

cc: Natalie Oryshkewych, DHWM, NEDO
Dan Bogoevski, DSW, NEDO
Susan Netzly-Watkins, DERR, NEDO

ec: Mitch Mathews, DHWM, CO
Harry Sarvis, DHWM, CO