



State of Ohio Environmental Protection Agency

Northeast District Office

2110 East Aurora Rd.
Twinsburg, Ohio 44087

TELE: (330) 963-1200 FAX: (330) 487-0769
www.epa.state.oh.us

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

December 18, 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 Messrs. Ezinga, Fiorilli, and 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 to the verified complaint 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 (DHWM) 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.).

Based on Ohio EPA's review of the additional information, Ohio EPA, DHWM issued a NOV letter on September 23, 2009. The NOV letter cited SCA, Fiorilli Construction, and Bontrager Excavating for violation of Ohio Administrative Code (OAC) rule 3745-52-11 for failure to adequately evaluate spoils (i.e., excavated soils) and contaminated water that were generated at the facility.

On October 15, 2009, BJAAM Environmental, Inc. (BJAAM), on behalf of SCA, submitted a response to the NOV dated September 23, 2009. The submittal included soil and ground water results from April 2008 that were part of a Phase II Environmental Site Assessment for one portion of the property and a Phase I Environmental Site Assessment for the other portion of the property. Upon review of this information, SCA has not met the burden of demonstrating that the soils excavated from the facility between February and August 2009 did not contain hazardous waste constituents in excess of the regulatory level.

Specifically, there were four areas of soils which when removed needed further characterization. These areas, due to their unique operations, potential wastes generated or chemicals used in the past, should have been examined individually as potential hazardous waste generation areas (i.e., separate waste streams for evaluation purposes). Combining these four distinct areas' samples with other area samples in order to calculate a 95 percent upper confidence level (95% UCL) for one area of concern as was indicated in the October 2009 submittal was inappropriate.

These four areas include:

- 1) Former Waste Oil Underground Storage Tank (UST) Area – Lead levels found in April 2008 soil samples exceed 100 mg/kg total lead, specifically in samples SB-3 from 0-2 feet (119 mg/kg) and MW-2 from 0-2 feet (123 mg/kg).
- 2) Former Body/Paint Shop – Again lead was found in an April 2008 soil sample above 100 mg/kg total lead, specifically in sample SB-6 from 0-2 feet (178 mg/kg). Two other soil samples may have been close to 100 mg/kg total lead due to elevated detection levels in SB-5 from 0-2 feet (result listed as <100 mg/kg) and SB-6 from 8-10 feet (result listed as <100 mg/kg).

These two areas cannot be ruled out as not containing hazardous waste constituents in excess of the regulatory level based on the limited sampling and a “rule of twenty” approach. Additionally, since the soils come from potentially specific hazardous waste management generation areas, they cannot be combined together with all other data used to develop a 95% UCL. These two areas, at a minimum, should have been evaluated separately.

- 3) Former Photography Lab located at 49 East College Street – This area was not sampled to determine if any of the soils may have contained hazardous waste constituents. Operations took place in this location which may have caused contamination of the soil (e.g., silver) from past operations. The Phase I Environmental Site Assessment report submitted specifically discusses that the former photography lab operated from the 1950s to the 1970s, but not later than 1996. The Phase I further discusses the potential for release of spent photo chemicals to the soil surface and/or to drains associated with leaking subsurface pipes. However, soil samples were not collected from this area.

The only basis for determining the soil did not contain hazardous waste constituents in excess of the regulatory level was a visual inspection of the soil during building demolition, subsurface utility removal, and site reconnaissance. This approach is not sufficient to determine if a soil contains a hazardous waste. Additionally, no information was provided for chemicals historically used or how waste management operations took place at this location.

- 4) Former Abandoned UST Pipe Run – No soil sampling data exists for metals for either sampling location in this area (SB-1 or MW-1). Based on the information submitted, these soils were shipped off site as petroleum contaminated soils, without any analytical data for metals, to Petro Environmental LLC in Lodi, Ohio.

Therefore, any soils which came from these four areas, at a minimum, were not properly characterized in accordance with OAC rule 3745-52-11 and **SCA, Fiorilli Construction, and Bontrager Excavating remain in violation of OAC rule 3745-52-11.**

To abate this violation, SCA should determine where the above mentioned excavated soils were disposed and submit a list and map of these locations. SCA should then submit documentation demonstrating whether these soils are distinguishable from their surroundings. If they can be distinguished, SCA should attempt to properly characterize these soils to determine if they contain hazardous waste constituents in excess of the regulatory level. Ohio EPA encourages SCA 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.

If any future waste is generated from the site, including contaminated media, e.g., soil, ground water, etc., and is sent off-site for management, i.e., treatment, disposal, it must be properly evaluated per OAC rule 3745-52-11. SCA is encouraged to contact Ohio EPA if any questions arise as to how to properly evaluate any waste.

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 from having to comply with all applicable regulations.

Should you have any questions, please contact me at (330) 963-1141 or Natalie Oryshkewych at (330) 963-1267.

Sincerely,



Shannon Ryan
Division of Hazardous Waste Management

SR:ddw

cc: Natalie Oryshkewych, DHWM, NEDO
Dan Bogoevski, DSW, NEDO
Susan Netzly-Watkins, DERR, NEDO
Zachary Pierce, BJAAM Environmental, Inc.

ec: Mitch Mathews, DHWM, CO
Karen Nesbit, DHWM, NEDO
Todd Anderson, Legal, CO
Harry Sarvis, DHWM, CO