

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

October 2, 2007

Josh Rosen
Sustainable Communities Associates
138 Hollywood Street
Oberlin, OH 44074

**RE: RETURN TO COMPLIANCE AND SAMPLING AND ANALYSIS REPORT
APPROVAL WITH MODIFICATIONS
SUSTAINABLE COMMUNITIES ASSOCIATES, OHR 000 124 198**

Dear Mr. Rosen:

On September 28, 2006, Ohio EPA issued a Notice of Violation (NOV) to Sustainable Communities Associates (SCA) for its facility located at 43 East College Street, Oberlin, Ohio. The NOV included a citation for establishing a treatment, storage, disposal facility without a permit for the former waste oil tank unit at the facility. Although the waste oil tank had previously been removed in August 2004, Ohio EPA's review of the documentation from this removal revealed that the contents of the tank were hazardous waste based upon the concentration of lead. Because the materials in the tank were considered to be hazardous waste, a Resource Conservation and Recovery Act (RCRA) closure of the unit was required as stated in Ohio EPA's September 28, 2006 NOV.

In response to Ohio EPA's NOV, SCA submitted a Sampling and Analysis Plan (SAP) for the former waste oil tank unit on November 30, 2006. Ohio EPA approved the SAP on December 18, 2006 and SCA implemented the SAP on February 12, 2007. SCA submitted a Sampling and Analysis Report (Report) on April 11, 2007 to document the results of soil sampling that was conducted in February 2007 in and around the former waste oil tank cavity. Ohio EPA's concerns with the April 11, 2007 submittal were documented in a May 18, 2007 letter to SCA and further discussed during the meeting between Ohio EPA and SCA on May 29, 2007. A Revised Report was then submitted on June 18, 2007. Ohio EPA documented further concerns in a July 17, 2007 letter to SCA, which led to the most recent Revised Report submitted on August 24, 2007 and amended on September 13, 2007.

Ohio EPA has conducted a review of the most recent Revised Report and hereby approves the Revised Report with the following modifications:

1. Page 3, "Purpose." As stated in Ohio EPA's September 28, 2006 NOV letter, Ohio EPA may assert its right to have SCA begin facility-wide cleanup pursuant to the Corrective Action process under Ohio law. However, SCA may satisfy their Corrective Action obligations by complying with the State of Ohio's Voluntary Action Program (VAP) administered under Ohio EPA's Division of Emergency and Remedial Response (DERR). In order to satisfy Corrective Action obligations, the VAP procedures must be followed from the beginning stage through all the steps in the review and approval process necessary to obtain a VAP No Further Action letter and a Covenant Not to Sue. SCA should be aware that Ohio EPA retains its rights regarding Corrective Action for any areas of the property that are not eligible for the VAP program or are eligible but not sufficiently addressed by the voluntary action. Therefore, the last sentence under "Purpose" on Page 1 of the Revised Report is modified to state that "However, if SCA does not enroll in the VAP, then SCA will conduct Corrective Action activities, including a ground water investigation, which is outlined in this SAP."
2. Page 8, Table 2, is modified to include Ohio EPA, Division of Hazardous Waste Management's Risk-Based Generic Cleanup Numbers for the five contaminants of concern (total xylene, benzene, ethylbenzene, toluene, and lead) identified as part of the February 2007 sampling and analysis event as listed below:
 - total xylene – 1.70E+02 mg/kg or 170000 ug/kg
 - benzene – 6.31E+00 mg/kg or 6310 ug/kg
 - ethylbenzene – 1.50E+02 mg/kg or 150000 ug/kg
 - toluene – 2.71E+02 mg/kg or 271000 ug/kg
 - lead – 2.45E+02 mg/kg
3. Page 8, first paragraph following Table 2, the sentence "Any additional COCs will be addressed during either the NFA process or Corrective Action under Ohio Administrative Code rule 3745-54-101." is modified to remove the phrase "NFA process" and replace it with the phrase "VAP process".
4. Page 10, first paragraph, states that "If SCA pursues the VAP, it will follow the requirements of OAC Chapter 3745-300 for an NFA of the site." As mentioned above, SCA may satisfy their Corrective Action obligations by complying with the VAP program. However, to satisfy Corrective Action obligations, the VAP procedures must be followed from the beginning stage through all the steps in the review and approval process necessary to obtain a VAP No Further Action letter and a Covenant Not to Sue. Ohio EPA retains its rights regarding Corrective Action for any areas of the property that are not eligible for the VAP program or are eligible but not sufficiently addressed by the voluntary action.

5. Page 10, Letter B, states that "The full vertical and horizontal rate, extent, and concentration of the ground water contamination historically documented at the former waste oil tank will be determined during a ground water investigation at the site." However, the sentence is modified to replace the phrase "former waste oil tank" with the term "site" as was discussed during the May 29, 2007 meeting between Ohio EPA and SCA and was stated in Ohio EPA's July 17, 2007 letter to SCA.

Based upon Ohio EPA's review and approval with modifications of the Revised Report as stated above, SCA has abated the violation documented in the September 28, 2006 NOV as listed below:

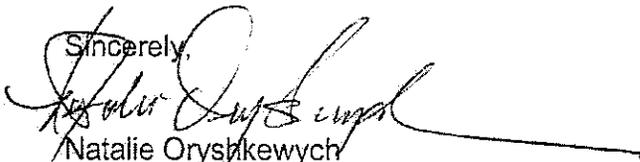
1. **Ohio Revised Code (ORC) § 3734.02 (E) and (F), Establishing and operating a hazardous waste facility without a permit**

SCA's return to compliance under Ohio's hazardous waste laws does not discharge SCA's obligation to investigate and possibly clean up contamination from releases of hazardous waste or hazardous constituents at the facility, regardless of when the waste was placed in the unit. This requirement is known as Corrective Action. However, it is Ohio EPA's understanding that SCA intends to pursue the VAP to satisfy this obligation.

Failure to list specific deficiencies and/or violations in this communication does not relieve you from the responsibility of complying with all applicable laws, rules and regulations.

If you have any questions, feel free to contact me at (330) 963-1267.

Sincerely,



Natalie Oryshkewych
Environmental Supervisor
Division of Hazardous Waste Management

NO:ddw

cc: Dave Sholtis, DHWM Central File, CO
Drew Bergman, Director's Office
ec: Harry Sarvis, DHWM, CO
Mitch Mathews, DHWM, CO
Todd Anderson, Legal, CO
Shannon Ryan, DHWM, NEDO
Diane Kurlich, DDAGW, NEDO
Harry Courtright, DHWM, NEDO
John Palmer, DHWM, NEDO