

**Environmental
Protection Agency**

Ted Strickland, Governor
Lee Fisher, Lt. Governor
Chris Korleski, Director

September 30, 2010

RE: LORAIN COUNTY
BLACK RIVER WATERSHED
CITY OF ELYRIA
ELYRIA HIGH SCHOOL

NOTICE OF VIOLATION

Mr. Richard Nielson
Elyria City School District
42101 Griswold Road
Elyria, OH 44035

Mr. Scott Wagner
Regency Construction Services Inc.
14600 Detroit Ave., Suite 1495
Lakewood, OH 44107

Dear Mr. Nielson and Mr. Wagner:

On September 10, 2010, I conducted a compliance inspection of storm water best management practices (BMPs) at the above referenced site in response to a complaint. The complainant expressed concerns about off-site tracking of sediment and dust due to construction activities. The complainant states that this matter has been an issue for some time and that he has made these complaints directly to the Elyria City School District and Regency Construction to no avail. An inspection conducted by Ohio EPA on June 15, 2010, and documented in our letter to Gene Eidenmiller of the Elyria City School District on July 7, 2010, indicates that off-site tracking was a problem at that time as well.

While on site, I spoke with Scott Wagner and Rick Collins of Regency Construction Services, site construction managers; Richard Nielson, Director of Business Services for the Elyria City School District; and David Gase of Marous Construction, the subcontractor tasked with sediment and erosion control for the project. Our records indicate that storm water discharges are authorized under the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities #3GC03930*AG.

My inspection revealed that the complaint regarding off-site tracking and dust generation is valid. I noted the following violation of the NPDES permit related to this issue:

- **Failure to control off-site tracking of sediment and minimize dust generation.** This is a violation of Part III.G.2.g.ii of the NPDES permit and ORC 6111.04 and 6111.07. There are several measures which can be taken to minimize sediment tracking and dust generation. These include, but are not limited to:

- **Provide rock construction entrances at all points where vehicles access disturbed areas of the site.** Although contractors are using existing concrete aprons, the aprons do not extend at least 70 feet into the site. Further, concrete does not have a rough surface capable of capturing or dislodging sediment adhered to vehicle tires. Please install rock construction entrances per the specifications contained in Rainwater and Land Development, Ohio's Standards for Stormwater Management, Land Development and Urban Stream Protection (Ohio Department of Natural Resources, 2006) available on-line at <http://www.dnr.state.oh.us/tabid/9186/default.aspx>. **NOTE:** You may continue to use the concrete apron as a portion of the rock construction entrance, but rock over geotextile should extend beyond such that the total length is 70 feet or greater. In addition, you may need to sweep the concrete or redress the non-paved portion with stone. Water bars may be required to divert flows away from adjacent streets where the drive slopes toward the street. Runoff should be diverted to an appropriate sediment control.
- **Wet main haul roads within the site.** A light application of water over main haul roads and areas which vehicles frequently access will minimize dust generation from truck traffic. If the SWP3 is properly implemented, any runoff that may result from this activity will be directed to either protected storm drain inlets or the two sediment traps.
- **Sweep adjacent streets with a vacuum sweeper.** Some off-site tracking will inevitably occur even if the above on-site controls are implemented. Sediment which is tracked off-site must be swept up and removed from adjacent streets. Currently, the contractor is using a rotating brush sweeper. These methods are not acceptable. Rotating brush sweepers simply disperse and redistribute dust. They do not collect dirt. Regency indicated that streets are wetted before sweeping to aid in dirt collection. My observation of the operation indicated that too much water is being used to wet streets. In essence, the contractor is simply washing sediment into the City of Elyria municipal separate storm sewer system (MS4). This practice must cease. A vacuum sweeper will collect dirt more efficiently and not create an illicit discharge to the MS4.

Additional dust generation issues resulting from building demolition have been referred to our Division of Air Pollution Control and will be addressed under separate cover.

In addition to the issue raised by the complainant, I reviewed compliance with all requirements of the NPDES permit. My review revealed the following additional violations:

Construction Site Controls

- **Failure to install sediment ponds within 7 days of first grubbing and prior to grading.** This is a violation of Part III.G.2.d.i of the NPDES permit and Ohio Revised Code (ORC) 6111.04 and 6111.07. The construction drawings show that sediment traps are to be installed in the NE and NW corner of the site. These traps were not installed on the date of inspection and must be installed immediately. Please review specific sizing and elevations with the project engineer. Also, please review where discharges from these traps are to be directed with the project engineer. Be sure that the runoff discharging from these traps does not create a public safety issue or does not traverse over disturbed soils and become re-impacted by sediment. It may be more prudent to provide piped outlet structures typical of sediment basins rather than sediment traps. Diversions may be required along site perimeters to collect runoff and direct it to the appropriate trap. Review drainage areas with the project engineer.
- **Failure to install silt fence to control sheet flow runoff from perimeter areas.** This is a violation of Part III.G.2.d.iii of the NPDES permit and ORC 6111.04 and 6111.07. The construction drawings show silt fence is to be placed along West Ave. No silt fence was installed on the date of inspection. Please install silt fence where needed along site perimeters.
- **Failure to maintain silt fence in a functional condition.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. The silt fence along 5th Street requires maintenance. Construction materials have been placed on top of some sections of silt fence and other sections are down, ripped or otherwise require repair. Please repair silt fence immediately.
- **Failure to install storm drain inlet protection.** This is a violation of Part III.G.2.d.iv of the NPDES permit and ORC 6111.04 and 6111.07. On the date of inspection, there were several existing storm drain inlets still actively connected to the City of Elyria MS4. Some had no protection at all and some required replacement due to tears in the geotextile fabric. Please install and repair storm drain inlet protection on all catch basins which are still actively connected to off-site drainage systems and any new storm sewer catch basins that have been installed.
- **Failure to implement non-sediment pollutant controls.** This is a violation of Part III.G.2.g.i of the NPDES permit and ORC 6111.04 and 6111.07. We noted three issues related to this violation:
 - Fluid spillage was noted in the vicinity of the diesel fuel tanks. No actions were taken to clean up soils contaminated by fluid spillage. Further, no signage or spill kit was available near the fuel tanks to encourage proper spill response.

- 55-gallon drums, 5-gallon buckets and fuel cans are not properly stored. Containers with chemicals, fuels or vehicle fluids should be stored in a locker, within secondary containment structures or on containment trays when not actively being used.
- The trash dumpster was not covered with a tarp or lid. Dumpsters containing municipal solid waste or construction and demolition debris must be covered to prevent the generation and discharge of leachate. The NPDES permit does not authorize the discharge of wastewater.

Post-Construction BMPs

- I noted that the bioretention cells for the first phase of this project have now been installed and the areas around the bioretention cells have been hydroseeded. However, vegetation has not yet established. As a result, I observed an appreciable amount of sediment washing onto to the surface of the bioretention cell at the SE corner of the site. Please be aware that this may cause the cell to fail prematurely. I recommend that silt fence be installed around the perimeter of the bioretention cells until such time that the vegetation around them establishes to a 70% or greater growth density. Installation of bioretention soil and plantings should be delayed until the areas adjacent to them have been stabilized.

Administrative Issues

- **Failure to produce a complete Storm Water Pollution Prevention Plan (SWP3).** This is a violation of Part III.A of the NPDES permit and ORC 6111.04 and 6111.07. Although construction drawings containing some of the information required in an SWP3 were eventually made available for review, a comprehensive, stand-alone document was not produced. Based on what we could review, the SWP3 is not complete. For example, the drawings indicate that two sediment traps are to be installed, one at the corner of 5th and West St and one at the corner of 5th and Middle Ave. This type of BMP must be designed specifically for the location at which it is being installed. A generic detail drawing of a sediment trap from a standards manual is inadequate to meet NPDES permit requirements. A review of the sheet containing detail drawings shows that there is insufficient information to construct the traps. The detail does not provide the specific dimensions and elevations required to properly construct each trap. Thus, the plan is incomplete.
- **Failure to make the SWP3 available to Ohio EPA on-site immediately upon request during normal working hours.** This is a violation of Part III.C.2.a of the NPDES permit and ORC 6111.04 and 6111.07. Mr. Wagner was unfamiliar with the SWP3 and could only produce construction drawings rather than a comprehensive stand-alone document meeting the requirements of Part III.G of the NPDES permit. The complete SWP3 must be kept on site and be updated to reflect any unexpected

changes in design, construction, operation or maintenance that would affect implementation of the SWP3 as originally planned.

- **Failure of operator to obtain NPDES permit coverage.** This is a violation of Part I.E of the NPDES permit, Ohio Administrative Code (OAC) 3745-38-06 and ORC 6111.04. This violation is specific to Regency Construction Services Inc. All parties that meet the definition of operator are required to obtain NPDES permit coverage. The definition of "operator" in the NPDES permit includes the party that manages the day-to-day operations at the construction site that are required to comply with the NPDES permit. It is our understanding that Regency Construction Services Inc meets the definition of operator. To obtain NPDES permit coverage, Regency must submit a Co-Permittee Notice of Intent (Co-Permittee NOI) to Ohio EPA. The Co-Permittee NOI was to be submitted by Regency prior to the start of construction activities. The form and instructions can be downloaded from our Web site at www.epa.ohio.gov/dsw/storm/stormform.aspx. There is no fee to file the form.
- **Failure to maintain a written document containing the signatures of all contractors and subcontractors involved in the implementation of the SWP3.** This is a violation of Part III.E of the NPDES permit and ORC 6111.04 and 6111.07. The permittee has a duty to inform all contractors and subcontractors not otherwise defined as operators of their obligations under the SWP3. To demonstrate that this has occurred, Part III.E of the NPDES permit requires the permittee to maintain a written document or certification statement signed by the contractors and subcontractors acknowledging review and understanding of SWP3 requirements. A sample certification statement can be found in Appendix H of the US EPA guidance manual titled *Developing Your Storm Water Pollution Prevention Plan: A Guide for Construction Sites* available on-line at www.epa.gov/npdes/stormwater/construction. Marous Construction would be an example of a contractor subject to this requirement. Please be sure that the required documentation is in place for all contractors and subcontractors whose work can impact compliance with the SWP3. A copy of this documentation should be available with the SWP3 on-site.
- **Failure to maintain documentation of storm water inspections.** This is a violation of Part III.G.2.i of the NPDES permit and ORC 6111.04 and 6111.07. The operator must conduct inspections of storm water BMPs once every 7 days and within 24 hours of a 0.5-inch or greater rainfall. Marous Construction stated that they were conducting these inspections, but are not maintaining the required documentation. The NPDES permit specifies the required contents of these reports. Please review the NPDES permit requirements and begin keeping inspection reports as required. The inspector conducting these inspections must be knowledgeable in the principles and practice of erosion and sediment controls and must possess the skills to assess all conditions at the construction site that could impact storm water quality. The inspector must also be able to evaluate the effectiveness of any

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sediment and erosion control measures selected to control the quality of storm water discharges from the construction site. Please be sure that you are using a qualified inspector.

You are directed to provide me with a letter of response indicating the actions you will take to correct these violations and prevent their future reoccurrence. Include any amendments to the SWP3 with your response. Your response must be received **no later than October 15, 2010**. Please note that Ohio EPA never received a response to our first inspection letter dated July 7, 2010. Failure to provide requested information to Ohio EPA will result in escalated enforcement actions. Violations of ORC 6111 are punishable by fines of up to \$10,000 per day of violation.

If you have any questions, please contact me at (330) 963-1145.

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/mt

cc: Mukund Moghe, Engineer, City of Elyria
William Grace, Mayor, City of Elyria
Paul Schmoll, Project Engineer, Thorson Baker & Associates

ec: Keith Riley, Asst. District Chief, Ohio EPA, NEDO
Mike Settles, Ohio EPA, PIC, CO

ELYRIA HIGH SCHOOL
City of Elyria Lorain County

Photos Taken: September 10, 2010
By: Dan Bogoevski, DSW, NEDO



Fig 1 & 2. Off site tracking onto Middle Ave (LEFT) and 5th Street (RIGHT). Note the lack of a rock construction entrance and failure to implement good housekeeping practices to keep aprons clean.



Fig 3. View toward West Ave. Although you may use existing aprons for a portion of the entrance drive, two-inch diameter stone over geotextile should extend beyond the existing aprons such that the total entrance drive is at least 70 feet long.



Fig 4 & 5. Soil contamination due to spills and leaks. Contaminated soils must be removed and properly disposed. 55-gallon drums are not stored within secondary containment.



Fig 6 (LEFT). 5th Street after it has been “wetted” to aid in street sweeping. Note that this procedure flushes sediment into unprotected storm drains.

Fig 7 (RIGHT). Inlet protection has ripped and requires replacement.



Fig 8 (LEFT). Construction materials have been placed on top of silt fence along 5th Street, compromising its function.



Fig 9 (RIGHT). Trash dumpsters are not covered to prevent the creation of leachate. Tarping is suggested.

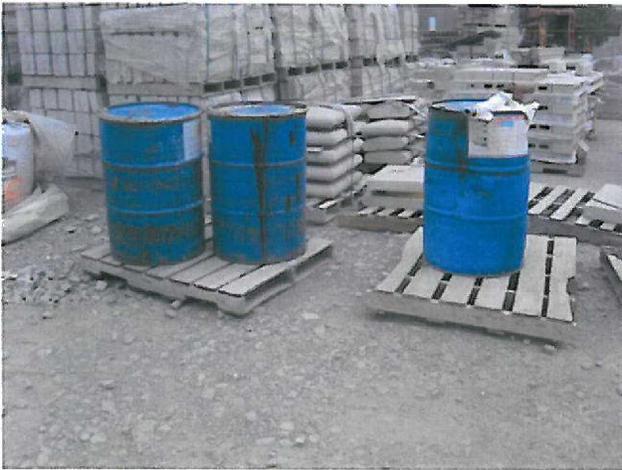


Fig 10 & 11. Storage containers for fuels and chemical materials used on the construction site are not stored within secondary containment or within a storage locker when not in use.



Fig 12 - 14. The sediment trap scheduled for the corner of 5th Street and West Ave (LEFT) has not been installed, yet the drainage area (BELOW) has been disturbed by construction activity.



Fig 15 (LEFT). Sediment is washing into the bioretention cell at the corner of 6th Street and Middle Ave. Silt fence should be installed around the cell until the surrounding vegetation establishes.