



**Environmental
Protection Agency**

John R. Kasich, Governor

Mary Taylor, Lt. Governor

Scott J. Nally, Director



November 7, 2011

RE: CUYAHOGA COUNTY
CITY OF BROADVIEW HEIGHTS
MUNICIPAL STORM WATER PROGRAM
CONSTRUCTION SITE RUNOFF CONTROL

NOTICE OF VIOLATION

Gene Esser, Engineer
City of Broadview Heights
9453 Broadview Rd.
Broadview Heights, OH 44147

Dear Mr. Esser:

As you are aware, on November 1, 2011, I performed a compliance inspection at the Broadview Heights Commercial Development construction site in response to a citizen complaint about off-site tracking. As a result of that inspection, I wanted to make the City of Broadview Heights aware that there are compliance issues related to the National Pollutant Discharge Elimination System (NPDES) permit programs for municipal storm water and storm water associated with construction activity that requires your attention.

The City of Broadview Heights, as a condition of the Ohio EPA General Storm Water NPDES Permit for Small Municipal Separate Storm Sewer Systems (MS4s) #3GQ00050*BG, is required to inspect construction sites for compliance with storm water regulations and ensure enforcement of Chapter 1334 of the municipal code titled Storm Water Pollution Prevention Plan (SWPPP). Our records show that the City of Broadview Heights works jointly with the Cuyahoga Soil & Water Conservation District (SWCD) to conduct plan review and construction site inspections. It is important that the City understand that the Cuyahoga SWCD can assist you to identify compliance issues on construction sites, but they have no authority to initiate or escalate enforcement within your community. This responsibility rests with the City of Broadview Heights. Failure to establish enforcement procedures and failure to escalate enforcement action are common violations found when Ohio EPA conducts an audit of MS4 programs. I am concerned that the City of Broadview Heights would also be in violation of these matters if we were to conduct an audit of your construction site program today.

Concerns Regarding MS4 Program

My inspection of the Broadview Heights Commercial Development site on November 1, 2011, indicated that off-site tracking of sediment was excessive (see copy of my inspection report sent to you under separate cover). A review of Chapter 1334 of your municipal code reveals that Part 1334.40 (m) states the following:

In the event that a site inspection by a representative of the Community Engineer yields evidence of excessive sediment or debris in the roadway, sewers or waterways, the building permit holder shall be subject to a fine of one hundred dollars (\$100.00) for a first offense and one hundred fifty dollars (\$150.00) for a second or subsequent offense. A photograph indicating the date of the event and a signed statement by the inspector shall document said conditions.

On November 1, 2011, Cuyahoga SWCD issued a Field Review Technical Advisory Report documenting an observable amount of off-site tracking onto Royalton Road and Treeworth Blvd. This report is not signed and it is unknown if the Cuyahoga SWCD is considered a representative of the Community Engineer as it pertains to Part 1334.40(m) of the municipal code. Further, Ohio EPA is not aware if the City of Broadview Heights has fined the building permit holder as stipulated in the code. Please be aware that in order to be in compliance with Part III.B.4.a.vi of the NPDES permit #3GQ00050*BG, Ohio EPA expects the City of Broadview Heights to follow the enforcement procedures established in a written enforcement escalation plan and the municipal code.

After reviewing the municipal code and the Technical Advisory Report, Ohio EPA has the following questions:

- (1) Has the City of Broadview Heights developed a written enforcement escalation procedure that is to be followed when Technical Advisory Reports from Cuyahoga SWCD indicate matters of non-compliance? If so, please provide me with a copy of those procedures.
- (2) Does the Technical Advisory Report from Cuyahoga SWCD constitute "a signed statement by the inspector documenting said conditions" required by Chapter 1334.40 (m)? Please clarify.
- (3) Does the written agreement you have with Cuyahoga SWCD authorize their inspectors to issue compliance determinations on behalf of the City of Broadview Heights? If not, does the City of Broadview Heights send the construction site operator any follow-up notification citing the section of municipal code that has been violated and a deadline for implementing corrective action?
- (4) Is the written agreement with Cuyahoga SWCD current? This document is required to be submitted each year with your Annual Report. Our records show that it was not included in the Annual Report for 2010. Please provide me with a copy of your current

agreement with Cuyahoga SWCD as it pertains to services provided for your MS4 program.

NPDES Permit for Construction Activities

It was noted during my inspection of the Broadview Heights Commercial Development that road improvements along Royalton Rd. and Treeworth Blvd. are part of the larger common plan of development or sale of the project. When questioned during my inspection, you indicated that the City of Broadview Heights is the operator of these construction activities as well as the improvements to a 60-inch storm sewer that runs from the Broadview Heights Commercial Development to the north-northeast through and behind the Get Go construction site. Our records do not indicate that the City of Broadview Heights has filed a Notice of Intent or Co-Permittee Notice of Intent for these construction activities. Further, a review of the Storm Water Pollution Prevention Plan (SWP3) for the project indicates that storm drain inlet protection is to be provided on catch basins on Royalton Road and Treeworth Blvd as well as the manhole north of the Get Go site. No inlet protection was observed on these inlets.

These oversights by the City of Broadview Heights lead to the following violations of NPDES regulations for construction activities:

- **Failure to obtain authorization to discharge storm water associated with large construction activity.** This is a violation of Ohio Administrative Code 3745-39-04(A)(1)(b) and Ohio Revised Code 6111.04. The larger common plan of development or sale of the Broadview Heights Commercial Development project disturbs 10.5-acres. NPDES permit coverage is required whenever the larger common plan of development or sale disturbs one or more acre. All parties that meet the definition of operator are required to obtain NPDES permit coverage. Since Echo Broadview Heights LLC has submitted a Notice of Intent (NOI) for this project, the City of Broadview Heights should have submitted a Co-Permittee NOI for your portion of the project. This form and instructions are available on our website at www.epa.ohio.gov/dsw/storm/stormform.aspx. The form will ask for the facility permit number under which you are submitting the Co-Permittee NOI. The facility permit number for this project is #3GC05271*AG.
- **Failure to install storm drain inlet protection to minimize the discharge of sediment to active storm drainage systems.** This is a violation of Part III.G.2.d.iv of the Ohio EPA General Storm Water NPDES Permit for Construction Activities #3GC05271*AG. As a construction site operator, the City of Broadview Heights is required to comply with the provisions of this permit and the SWP3 for the project. Please install storm drain inlet protection where shown on the SWP3 for your portion of this project.

The City of Broadview Heights will remain in violation of the NPDES permit #3GC05271*AG until a Co-Permittee NOI is submitted to Ohio EPA and storm drain inlet protection is installed

on catch basins on your portions of the project as depicted in the SWP3. Failure to comply with the NPDES permit is a violation of ORC 6111.04 and 6111.07 and is punishable by fines of up to \$10,000 per day of violation.

Please provide me with a letter of response indicating the actions you have taken or will be taking to address the violations and concerns noted herein. Your response should be received **no later than November 29, 2011**.

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

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/cs

Cc: Samuel Alai, Mayor, City of Broadview Heights
Lisa Vavro, Cuyahoga SWCD

BROADVIEW HEIGHTS COMMERCIAL DEVELOPMENT

City of Broadview Heights Cuyahoga County

NPDES Permit #3GC05271*AG

Photos Taken: November 1, 2011

By: Dan Bogoevski, DSW, NEDO



Fig 1 & 2. The storm sewer inlet on Royalton Road near Treeworth Blvd is not protected. There are no perimeter controls on the construction site either.

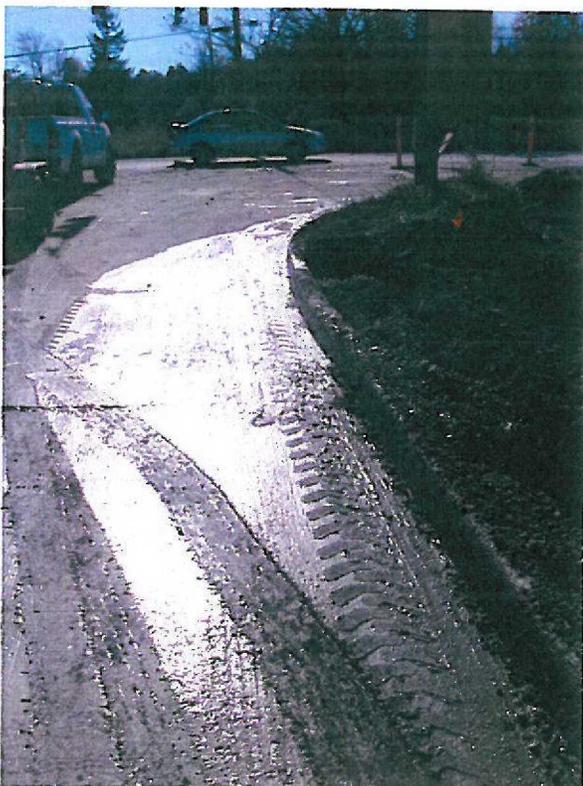


Fig 3 (LEFT). Slurry from saw-cutting activity flows north onto Treeworth Blvd (in foreground).

Fig 4 (ABOVE). There is no inlet protection around the manhole behind the Get Go site. Disturbed areas have not been stabilized.