



**Environmental
Protection Agency**

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

October 14, 2010

RE: Cuyahoga County
Rocky River Watershed
City of Cleveland
Cleveland Hopkins International Airport
Taxiway Q and Holding Pad

NOTICE OF VIOLATION

Mr. Ricky D. Smith, Director
City of Cleveland Department of Port Control
5300 Riverside Dr.
P.O. Box 81009
Cleveland, OH 44181

Dear Mr. Smith:

Our records indicate that storm water discharges from the above referenced project are authorized under the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities #3GC04854*AG. Part III.G.2.e of this permit requires the Department of Port Control to install post-construction best management practices (BMPs) to treat the Water Quality Volume (WQv). The Storm Water Pollution Prevention Plan (SWP3) associated with this NPDES permit and approved by the City of Cleveland Department of Building and Housing indicates that dry enhanced swales are to be installed to meet this requirement.

Upon inquiry to the Cuyahoga Soil & Water Conservation District (SWCD), it has come to our attention that the dry enhanced swales have not been installed. **Please be aware that failure to install post-construction BMPs is a violation of Part III.G.2.e of the NPDES permit and Ohio Revised Code (ORC) 6111.04 and 6111.07.** Violations of ORC 6111 are punishable by fines of up to \$10,000 per day of violation.

Cuyahoga SWCD indicates that the Department of Port Control decided, after construction began, that these practices would be non-performed and different, off-site practices would be installed to meet Ohio EPA's post-construction requirements. Part III.D of the NPDES permit does allow the SWP3 to be amended whenever there is a change in design, construction, operation or maintenance; however this provision is intended to apply to unexpected occurrences or unforeseen circumstances. This provision does not give the Department of Port Control authority to fundamentally change the nature of post-construction BMPs for a project due to convenience. In our Post-Construction Question & Answer document, Ohio EPA has indicated that alternatives are only acceptable when standard practices, such as dry enhanced

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swales, are infeasible. Infeasibility is tied to a practical limitation or the inability to provide a functional BMP design. The approved SWP3 clearly shows that there is no physical limitation to achieve a functional BMP design.

In addition, please be aware that although Part III.G.2.e of the NPDES permit allows for off-site mitigation under certain circumstances, you must obtain prior approval from Ohio EPA. Part III.G.2.e of the NPDES permit specifically states: "Requests for offsite mitigation must be received prior to the receipt of the NOI [Notice of Intent] application." Ohio EPA received the NOI for the NPDES permit for the Taxiway Q & Holding Pad project prior to March 31, 2010. The Department of Port Control has never approached Ohio EPA with a request for offsite mitigation of post-construction BMPs for the Taxiway Q and Holding Pad project. The window of opportunity to make such a request has long passed. Thus, off-site mitigation is no longer an option for this project.

Please provide me with a letter of response indicating a schedule for installing the dry enhanced swales depicted on the approved SWP3. Per Part III.G.3 of the NPDES permit, applicable requirements of storm water management plans approved by local officials are, upon submittal of the NOI, incorporated by reference and enforceable under the NPDES permit. **Please submit your response no later than October 29, 2010.**

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

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/mt

cc: Kim McGreal, DPC Environmental Services, City of Cleveland
Julianne Kurdila, Department of Law, City of Cleveland
David Cooper, Department of Building & Housing, City of Cleveland
Todd Houser, Cuyahoga SWCD