

**Environmental  
Protection Agency**

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

November 19, 2010

RE: Cuyahoga County  
Cuyahoga River Basin  
City of Cleveland  
Cuyahoga Valley Industrial Center

**NOTICE OF VIOLATION**

Mr. Brian Dougherty  
Greater Cleveland Community Improvement Corp.  
1375 E. 9<sup>th</sup> Street  
One Cleveland Center, 9<sup>th</sup> Floor  
Cleveland, OH 44114

Mr. Doug Prodoehl  
Joe Dirt  
2410 Performance Way  
Columbus, OH 43207

Dear Mr. Dougherty and Mr. Prodoehl:

On October 5, 2010, I visited the above referenced site to determine if storm water discharges from construction activities were subject to the National Pollutant Discharge Elimination System (NPDES) permit program administered by Ohio EPA. While on site, I met with Doug Prodoehl of Joe Dirt, site contractor, and reviewed the Storm Water Pollution Prevention Plan (SWP3) approved through the Cuyahoga Soil & Water Conservation District (SWCD) on behalf of the City of Cleveland Department of Building and Housing. After review of the plan, I determined that storm water discharges from sediment basins and detention basins planned for the site would in fact have a discharge to the Cuyahoga River via the now-piped Morgana Run. As such, it was determined that NPDES permit coverage is required. I contacted Mike Coonfare, project manager for Hull & Associates, and notified him of my findings. On October 28, 2010, Ohio EPA issued the Greater Cleveland Community Improvement Corp coverage under the Ohio EPA General Storm Water NPDES Permit for Construction Activities #3GC05163\*AG.

However, our records do not indicate that Joe Dirt has obtained coverage under the NPDES permit. The NPDES permit requires all parties that meet the definition of operator to obtain permit coverage. Operator is defined as any party that meets either of the following two criteria:

- (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
- (2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with the SWP3 or other permit conditions.

It appears that Joe Dirt meets the second of these criteria and thus, must obtain NPDES permit coverage. To obtain coverage, Joe Dirt must submit a Co-Permittee Notice of Intent (Co-Permittee NOI) to Ohio EPA. The Co-Permittee NOI was to be submitted before Joe Dirt began work on the site. The form and instructions are available online at [www.epa.ohio.gov/dsw/storm/stormform.aspx](http://www.epa.ohio.gov/dsw/storm/stormform.aspx). **Failure to obtain NPDES permit coverage is a**

Mr. Brian Dougherty  
Mr. Doug Prodoehl  
Cuyahoga Valley Industrial Center  
November 19, 2010  
Page 2

**violation of Ohio Revised Code 6111.04 and Ohio Administrative Code 3745-38-06.** Please submit a Co-Permittee NOI to correct this violation. There is no fee to file this form. This violation is specific to Joe Dirt.

In addition, Ohio EPA has concerns about the nature of fill material that is present or will be brought to the site and its potential to impact the quality of storm water runoff. In my review of the SWP3, I did not notice any review or screening process for potentially-contaminated materials. Although Joe Loucek of the Ohio EPA did review a materials management plan for the fill material brought to the site from the Cleveland Harbor CDF 10B Dredge project, this is only one source of fill that will be brought to this site over time. Ohio EPA has no assurances that any review process will occur to ensure that future fill material brought to the site or pre-existing material from past industrial land use will not impact storm water runoff and cause a water quality violation. Please be aware that concentrations of materials that meet other criteria (is not considered hazardous waste, meets VAP standards, etc.) may still result in storm water discharges in excess of Ohio Water Quality Standards. **Such discharges are not authorized by the NPDES permit.**

To address this concern, at a minimum, the SWP3 should be amended to:

- Identify areas of the site where contaminated materials exist and may become exposed to precipitation,
- Provide a review or screening process for materials brought to the site to determine if they are visibly contaminated with pollutants that can be mobilized by storm water or are capable of leaching contaminants to storm water that would exceed Ohio Water Quality Standards.
- Provide a list of best management practices (BMPs) to prevent the discharge of runoff from areas where contamination exists or where contaminated materials may be placed.

Part III.G.2.g.v of the NPDES permit indicates that appropriate BMPs include, but are not limited to:

1. Use of berms, trenches and pits to collect contaminated runoff and prevent discharges
2. Pumping runoff into a sanitary sewer (with prior approval of the sanitary sewer operator) or into a container for transport to an appropriate treatment/disposal facility; and
3. Covering areas of contamination with tarps or other methods that prevent storm water from coming into contact with contaminated material

Other practices that may be considered include prohibiting contaminated material from being brought to the site or limiting its placement within areas that would not allow discharges of contaminated runoff to surface waters of the state or conveyances to surface waters of the state. It is very important that you train on-site staff about these BMPs and where and when they should be employed.

Mr. Brian Dougherty  
Mr. Doug Prodoehl  
Cuyahoga Valley Industrial Center  
November 19, 2010  
Page 3

On the date of my site visit, runoff appeared to be contained to the site via berms and the connection to Morgana Run had not yet been made. I advised Mr. Prodoehl that connections to the Morgana Run storm sewer should be avoided until this matter was addressed.

Please amend the SWP3 to address these concerns and provide me with a copy **no later than December 17, 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: Mike Coonfare, Hull & Associates  
Sean McGee, Hull & Associates  
Lisa Vavro, Cuyahoga SWCD  
Ollie Shaw, Commissioner, Division of Water Pollution Control, City of Cleveland  
David Cooper, Deputy Director, Department of Building and Housing, City of Cleveland

ec: Sue Watkins, Ohio EPA, DERR, NEDO  
Joe Loucek, Ohio EPA, DSW, NEDO