



State of Ohio Environmental Protection Agency

Northeast District Office

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Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

December 16, 2009

RE: LORAIN COUNTY  
HEIDER DITCH WATERSHED  
CITY OF AVON  
CITY CENTRE OF AVON NO. 1 & NO. 2

**NOTICE OF VIOLATION**

Mr. Randy Eiler  
DeVile Developments  
3951 Convenience Circle #301  
Canton, OH 44718

Mr. Chip Dubosh  
Loeser Excavating Co., Inc.  
1200 Center Rd  
Avon, OH 44011

Dear Mr. Eiler and Mr. Dubosh:

On December 2, 2009, I performed a compliance inspection of storm water best management practices (BMPs) at the above referenced site. While on site, I met with both of you. We were accompanied by Mike Higgins and Bob Papotto of Bramhall Engineering, engineers for the City of Avon, and Jim Piazza, City of Avon Storm Water Program Manager. My inspection was conducted to determine compliance with the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities #OHC000003.

Because this project was initially started by a different development company, there is some confusion as to which NPDES permit pertains to which part of this project. Our records show that there are four active NPDES permits for this project. There is a permit for City Centre of Avon No 1 (#3GC02772\*AG), City Centre of Avon No 2 Phase 1 (#3GC02957\*AG), City Centre of Avon No 2 Phase 2 (#3GC04434\*AG), and an NPDES permit for City Centre of Avon No 3 (#3GC02956\*AG). After discussing the situation on site, it was determined that the NPDES permit for City Centre of Avon No 3 was submitted by Lake Pointe Construction, the previous developer. Because Lake Pointe Construction no longer has any involvement in the City Centre of Avon project, I notified them to terminate NPDES permit coverage for City Centre of Avon No 3. Thus, please be aware that DeVile Development will need to file its own Notice of Intent (NOI) to obtain additional NPDES permit coverage if and when there is any construction beyond City Centre of Avon No 2 Phase 2. Currently, disturbance on this site only extends to the construction activities depicted on the Storm Water Pollution Prevention Plans (SWP3s) associated with City Centre of Avon No 1, City Centre of Avon No 2 Phase 1 and City Centre of Avon No 2 Phase 2.

My inspection of the site revealed the following violations:

**Administrative Issues**

- **Failure for an Operator to notify Ohio EPA of their intent to obtain NPDES Permit coverage.** This is a violation of Part II.B of the NPDES permit and Ohio Revised Code 6111.04. Loeser Excavating, as the site general contractor, has day-to-day operational

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control of activities at this site which affect compliance with the SWP3. As such, Loeser Excavating meets the definition of Operator contained in Part VII of the NPDES permit and is required to obtain NPDES permit coverage. Our records do not show that this has occurred. To obtain NPDES permit coverage, Loeser Excavating must submit a Co-Permittee Notice of Intent (see enclosure). Loeser Excavating will remain in violation until a Co-Permittee NOI is submitted.

- **Failure to amend the SWP3 whenever there is a change in design, construction, operation or maintenance.** This is a violation of Part III.D of the NPDES permit and ORC 6111.04 and 6111.07. A review of the SWP3s for City Centre of Avon No 2 Phase 2 indicates that Sediment Basin #2 was to be installed and remain in place until such time that the storm sewer system was installed and drainage could be directed to Sediment Basin #1. The contractor has not followed this intended sequence of construction and, as a result, has removed Sediment Basin #2 without amending the SWP3 to provide an alternative means to convey runoff to Sediment Basin #1 or an acceptable replacement BMP for Sediment Basin #2. This is allowing sediment-laden runoff to discharge from the site via the storm sewer that carries off-site runoff under and through the site. Further, a review of the detail drawing for Sediment Basin #1 revealed that it does not meet the requirements of the NPDES permit and *Rainwater and Land Development* (Ohio Dept. of Natural Resources, 2006). After some discussion, it was determined that the best course of action would be to have a meeting between you, the City of Avon and your project engineers (KS Associates), to discuss the amendments that are needed to the SWP3. It is my understanding that this meeting was held on December 4, 2009. Please provide me with a copy of the amended SWP3 once it is approved by the City of Avon.

### Implementation of the SWP3

- **Failure to maintain perimeter sediment controls in a functional condition until the contributing drainage area reaches final stabilization.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. The perimeter silt fence along Detroit Road was removed to install final landscaping, yet there was no activity on the date of inspection to perform final landscaping. Thus, the silt fence should have been in place on the date of inspection. Please replace the silt fence and maintain it until you apply permanent stabilization to the areas draining to the silt fence. In the future, if you must remove silt fence to conduct certain construction activities, be sure to replace it at the end of the work day.
- **Failure to install sediment ponds within 7 days of first grubbing and prior to grading the area they will control.** This is a violation of Part III.G.2.d.i of the NPDES permit and ORC 6111.04 and 6111.07. The sediment pond shown on the SWP3 has not been installed on the Schoolhouse property. This pond is needed to prevent sediment-laden discharges onto Detroit Rd. Please immediately install the sediment pond as depicted in the SWP3. Mr. Dubosh indicated that this pond would be installed by the week of December 7, 2009.

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- **Failure to initiate permanent stabilization of disturbed areas within 7 days of the most recent disturbance if they will lie dormant for 1 year or longer.** This is a violation of Part III.G.2.b.i of the NPDES permit and ORC 6111.04 and 6111.07. The area south of the Huntington Bank will not be developed at this time and it is unknown when development on this land will occur. As such, it must be stabilized. We recommended this area be dormant seeded (see enclosed specifications on Page 44 of the Permanent Stabilization specification from the Rainwater manual). This is particularly important because a good portion of this area drains into bioretention cells that are being installed for post-construction at the Huntington Bank building. All measures must be taken to prevent sediment-laden discharges to the bioretention cells once the bioretention soil mix has been placed. Otherwise, this will result in premature failure of these structures. We recommend that silt fence be installed along the bioretention cells until the grass on the parcel you will dormant seed establishes.

Finally, it appears that construction at the back of the future Marc's store has extended beyond the limits of construction depicted in the SWP3. Please remove any fill materials from areas that lie beyond your property boundary. We caution you that areas south of the intended construction limits may contain wetlands. Section 404 and/or 401 permits are required to place fill in wetlands. Please be sure that you perform a wetland delineation before impacting other areas with construction.

Please provide me with a letter of response indicating the actions that you have taken or plan to take to address the violations and concerns noted above. Include a copy of all amendments to SWP3s required to address our concerns. Your response should be received no later than December 31, 2009.

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

Sincerely,



Dan Bogoevski  
District Engineer  
Division of Surface Water

DB/mt

cc: Jim Piazza, Storm Water Program Manager, City of Avon  
James Smith, Mayor, City of Avon  
Bob Papotto, Bramhall Engineering