



**Environmental
Protection Agency**

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

May 3, 2010

RE: LORAIN COUNTY
BLACK RIVER WATERSHED
CITY OF AVON
KENWYN VILLAGE SUBDIVISION

Mr. Gary Smitek
South Park Ltd.
3320 Stoney Ridge Rd.
Avon, OH 44011

Mrs. Carole Logan
3426 Pelham Place
Avon, OH 44011

Mr. Mark Smitek
Smitek Construction Group LLC
3320 Stoney Ridge Rd.
Avon, OH 44011

Dear Mr. Smitek, Mrs. Logan and Mr. Smitek:

On April 19, 2010, Ohio EPA received a complaint regarding storm water runoff associated with the construction of homes on S/L 6 and 7 in the above referenced subdivision. The complainant alleges that builders have pushed soil against a silt fence, knocking it over. The installation and maintenance of storm water best management practices (BMPs) such as silt fence is regulated under the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities. Our records indicate that South Park Ltd obtained NPDES permit coverage for the Kenwyn Village Subdivision in June 2004 and that this permit (#3GC00385*AG) is still active.

On April 22, 2010, I inspected the site in response to the complaint and found it to have merit. A section of silt fence behind S/L 7 had been knocked over and was non-functional. Please be aware that the NPDES permit requires BMPs to be maintained in a functional condition until the Kenwyn Village Subdivision has reached final stabilization. Silt fence and other sediment controls are not considered functional if they cannot pond runoff.

While on site, I spoke with Bill Logan, husband of Carole Logan, about this matter and asked him to repair the silt fence. Mr. Logan indicated that he had not erected the silt fence, but rather, it had been installed by the developer, South Park Ltd.

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Please be aware that the NPDES permit does provide a mechanism to transfer permit compliance responsibilities from developer to homebuilder when a parcel within a development is sold. Responsibility for BMP implementation and maintenance can only be transferred for those BMPs which are specific to the parcel being sold and only for BMPs that do not serve multiple lots. On the typical individual building lot, this may include the installation of a rock construction entrance, silt fence around the lot perimeter, storm drain inlet protection around rear or front yard drains, temporary stabilization of soil stockpiled after basement excavation, and containment for cement truck washout and trash and debris. Compliance responsibility is to be transferred at least 7 days prior to the start of construction on each individual building lot. Transfer occurs when the homebuilder submits an Individual Lot Notice of Intent (Individual Lot NOI) to Ohio EPA. The homebuilder is compelled to take responsibility for BMP installation and maintenance unless the developer has agreed to continue this obligation.

Please provide me with a clarification regarding who is responsible for implementing BMPs on individual building lots in the Kenwyn Village Subdivision, including the silt fence behind S/L 6 and 7. This may require you to review the language in the sales agreement between developer and homebuilder. Our records do not indicate that the homebuilders on S/L 6 and 7 have submitted Individual Lot NOIs.

If the homebuilders are responsible for BMPs, please submit an Individual Lot NOI to Ohio EPA and repair the silt fence in question. Maintain all other sediment and erosion controls until your lot reaches final stabilization. For individual lots in residential construction, final stabilization is defined as either:

1. All soil disturbing activities on the lot are complete and the homebuilder has removed all temporary sediment and erosion controls. In addition, the homebuilder has established a uniform perennial vegetative cover with a density of at least 70% on all unpaved areas and areas not covered with structures or permanent landscaping, or
2. The homebuilder has established temporary stabilization and installed perimeter controls around the individual building lot prior to the occupation of the home by the final homeowner and has informed the homeowner of the need for and benefits of final stabilization.

If the developer is responsible for BMPs, no additional notifications to Ohio EPA are required, but the silt fence must be repaired and the developer must ensure that BMPs are implemented during the house construction process.

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Please provide me with a response and/or submit Individual Lot NOIs **no later than May 17, 2010**. Include a photo of the silt fence after it has been repaired to demonstrate corrective action has occurred.

Finally, I noted that fill material has been placed over wet areas that may potentially be wetlands. I have referred this matter to Lauren McEleney of our Section 401 Program and Tina Stonemetz with the Army Corps of Engineer for review and follow-up.

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

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/mt

cc: Robert Knopf, Engineer, City of Avon
Helen Cangemi

KENWYN VILLAGE SUBDIVISION
City of Avon Lorain County
Operator: South Park Ltd.

Photos Taken: April 22, 2010
By: Dan Bogoevski, DSW-NEDO



Fig 1. Perimeter silt fence at the back of S/L 7 requires repair.

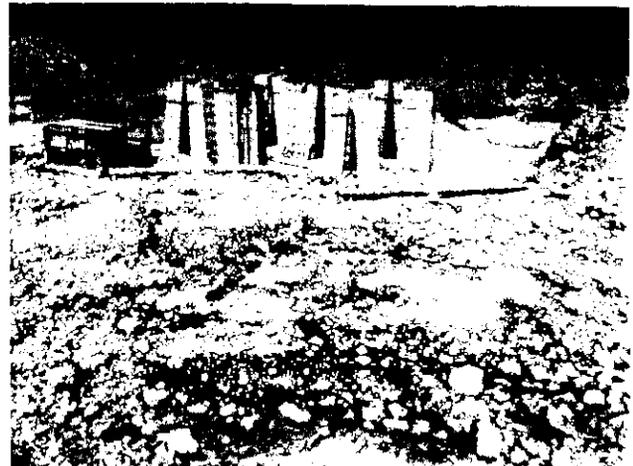


Fig 2 (LEFT). Although rock construction entrances have been installed to access S/L 6 and S/L 7, sediments are still being tracked out onto N. Long St. Good housekeeping practices such as street sweeping should be implemented to remove sediments from the roadway.

Fig 3 (RIGHT). Although no release of cement washwater was noted from S/L 6, it was noted that wash out has occurred in an area without containment. Ohio EPA recommends the installation of a cement washout pit to contain washwater and prevent its discharge off-site.

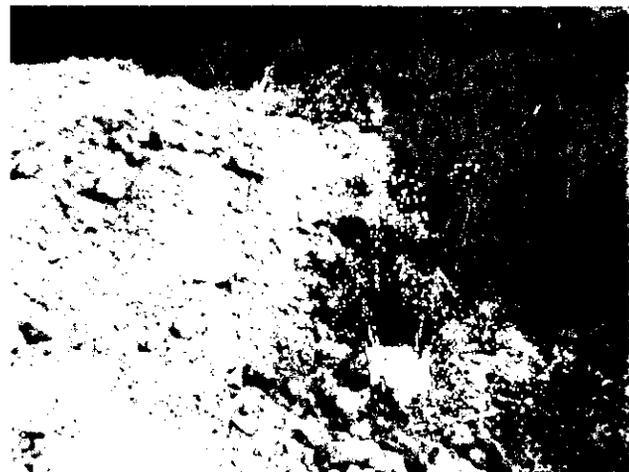


Fig 4-6. The complainant also expressed concerns that stockpiles of basement excavations would impede drainage from her mother's property. What appears to be an intermittent stream was noted coming from the adjacent property onto the Kenwyn Village Subdivision near S/L 6. Areas adjacent to S/L 6 and 7 were wet, an indicator that wetlands may be present. Please provide me with any wetland delineation and/or Section 404 or 401 permit issued for this development.