



State of Ohio Environmental Protection Agency

Northeast District Office

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

July 24, 2009

RE: LORAIN COUNTY
BLACK RIVER WATERSHED
CITY OF OBERLIN
EAST COLLEGE STREET

NOTICE OF VIOLATION

Mr. Ben Ezinga
Sustainable Community Associates Ltd.
138 Hollywood St.
Oberlin, OH 44074

Mr. Carmen Fiorilli
Fiorilli Construction Inc.
1399 East 17th St.
Cleveland, OH 44114

Mr. D. Brian Bontrager
Bontrager Excavating Ltd.
11087 Cleveland Ave., NW
Uniontown, OH 44685

Dear Mr. Ezinga, Mr. Fiorilli and Mr. Bontrager:

On June 17 and 18, 2009, I met with Ben Ezinga and Josh Rosen of Sustainable Community Associates Ltd (SCA), to investigate a verified complaint received by Ohio EPA on April 2, 2009, and addendum received on May 12, 2009. The complainant alleges violations of Ohio Revised Code (ORC) 6111 and ORC 3734.02 (E) and (F) by SCA and its construction management firm, Fiorilli Construction Inc. On June 17, 2009, I was also able to interview Jay Hurwitz, site superintendent with Fiorilli Construction. On June 18, 2009, I met again with SCA, as well as additional representatives of Fiorilli Construction; Bontrager Excavating, earthwork contractor; and KS Associates, project engineers. Our records indicate that SCA has obtained coverage under the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities #3GC04211*AG.

Storm Water Program Issues

My investigation focused on allegations of non-compliance with ORC 6111 and the NPDES permit. After review of the information submitted by the complainant and my interview with SCA and other site operators, the following violations of the NPDES permit alleged in the complaint appear to have occurred:

- **Failure to implement trench and groundwater controls to prevent turbid discharges from dewatering activities.** This is a violation of Part III.G.2.g.iv of the NPDES permit and ORC 6111.04 and 6111.07. Photos submitted by the complainant and reviewed with SCA on June 17, 2009, show turbid discharges from excavation and trench dewatering did occur on at least the following dates: March 9 and 11, 2009, and on or about April 3, 4, 6, 7 and 15. The contractor and/or subcontractors operating on this site failed to implement the dewatering measures stipulated in the Storm Water Pollution Prevention Plan (SWP3). Sediment-laden trench and excavation water was

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directed to a catch basin connected directly to the municipal separate storm sewer system (MS4) or out onto S. Pleasant St. When dewatering trenches and excavations, site operators must use one of the dewatering methods stipulated in Note 21 and the note titled "Handling of Non-Sediment Pollutant Sources" on Sheet 42 (SW-7) of the site plans.

- **Failure to control off-site tracking of sediment out onto S. Pleasant St.** This is a violation of Part III.G.2.g.ii of the NPDES permit and ORC 6111.04 and 6111.07. Video taken by the complainant on April 28 and 29, 2009, shows sediment-laden discharges into Plum Creek during or shortly after a rain event. Upon review of the video, the source of the sediment is soils tracked out onto S. Pleasant St. at the SCA project construction entrance. Good housekeeping measures must be implemented to clean up soils that are tracked off-site. A mechanical broom sweeper is on site, however be aware that vacuum sweepers are more efficient. Be sure to clean up materials that get tracked off-site as soon as possible and certainly prior to a storm event to prevent turbid discharges in the future.
- **Failure to maintain silt fence and other controls as needed to ensure continued performance of its intended function.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. A photo of the silt fence taken on February 25, 2009, around the soil stockpile at the south end of 43 E. College Street shows it required maintenance. A photo of this same area taken on March 8, 2009, shows the gap between two sections of silt fence was not repaired and additional silt fence and/or water bar was not installed to prevent sediment-laden discharges from the south construction entrance. This runoff discharges to a catch basin near the entrance and a catch basin on the First Merit Bank property and then to Plum Creek at the S. Pleasant St. bridge abutment.
- **Failure to install runoff control practices contained in the SWP3.** This is a violation of Part III.G.2.c of the NPDES permit and ORC 6111.04 and 6111.07. The SWP3 indicates that a rip-rap conveyance channel was to be provided from the spillway of the sediment trap to S. Pleasant St. This conveyance channel was not installed. In addition, a video dated March 25, 2009, was provided showing a construction site worker washing off sediment from a cement truck with the resultant sediment-laden flow out onto S. Pleasant St. Sediment-laden flows must be directed to the sediment trap. Any washwater from the concrete chute must be directed to a concrete washout pit and be contained on site.

In addition, my inspection of the site on June 17, 2009, revealed the following violations of the NPDES permit:

- **Failure to amend the Storm Water Pollution Prevention Plan (SWP3) whenever there is a change in design, construction, operation or maintenance which has the potential to create a discharge of pollutants in storm water runoff.** This is a violation of Part III.D of the NPDES permit and ORC 6111.04 and 6111.07. My inspection revealed that the sediment trap was not placed in the location indicated on the SWP3 and that a second rock construction entrance has been installed at the back

of 43 E. College St. The SWP3 was not amended to show these changes to the plan and the additional BMPs required as a result. Since my inspection, SCA did revise the SWP3 and submitted it to me on June 29, 2009, so this violation has been corrected.

- **Failure to identify the location of off-site spoil areas and the control measures to be implemented at those sites in the SWP3.** This is a violation of Part I.B.1.c of the NPDES permit and ORC 6111.04 and 6111.07. The complainant indicates that soils from the East College Street project have been taken to at least three locations: (a) Parcel #14-00-075-000-026 on SR 303 in Pittsfield Twp, (b) 45250 Hamilton St in New Russia Twp, and (c) 4674 Wenz Road in Clarksfield Twp (Huron County). It is understood that often, this information is not known at the time the SWP3 is developed. However, this information must be added to the SWP3 once it is known and prior to disposing of material on these sites.

This information was never added to the SWP3 once known. The SWP3 does not identify these sites as disposal areas for materials excavated from the East College Street project. Further, my review of 45250 Hamilton St. indicates that there are no sediment and erosion controls in place for runoff from the soils disposed there. And, as indicated in the June 8, 2009, letter from the United States Army Corps of Engineers to the property owner, Glenn Kerly, fill material has been placed in wetlands without authorization. Please provide me with the location of all off-site property that has been used to dispose of material from your project and identify the control measures that were implemented on these sites.

- **Failure to properly install and maintain silt fence on the project.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. This violation pertains to the silt fence located around the soil stockpile and along the south construction entrance. Silt fence cannot have gaps, must be trenched in, pulled tight, backfilled and extended to intercept the entire width of flow in order to cause runoff to pond. Please install and repair the silt fence as necessary for it to function as intended.
- **Failure to install runoff controls across the south construction entrance.** This is a violation of Part III.G.2.c of the NPDES permit and ORC 6111.04 and 6111.07. The south construction entrance consists of an existing paved drive. Construction vehicles accessing the soil stockpile deposit sediment on this drive, where it can be washed off site by runoff or tracked off-site by construction vehicles. The detail drawing contained in the SWP3 for rock construction entrances indicates that a water bar may be necessary to intercept sediment-laden flows and direct them to a sediment control. A water bar was not installed. The amended SWP3 specifies that a water bar will be placed across the drive and the existing pavement is to be replaced with geotextile and stone. Please install these runoff controls in accordance to the revised SWP3.
- **Failure to temporarily stabilize the soil stockpile located on the south end of 43 E. College St.** This is a violation of Part III.G.2.b.i of the NPDES permit and ORC 6111.04 and 6111.07. Although photos submitted by the complainant indicate that the soil stockpile placed at the rear of 43 E. College St. was covered with a tarp at one time, the tarp cover has not been maintained and the pile has not been temporarily stabilized with

vegetation or straw mulch. The NPDES permit requires temporary stabilization to be initiated within 7 days of last disturbance on any disturbed area that will remain idle 21 days or longer.

- **Failure to provide a cover over the dumpster used to dispose of solid waste.** This is a violation of Part III.G.2.g.i of the NPDES permit and ORC 6111.04 and 6111.07. Once storm water comes in contact with solid waste, it becomes leachate, a wastewater. The NPDES permit does not authorize the discharge of leachate. The best way to prevent the potential discharge of leachate is to provide a lid or tarp cover over dumpsters. The solid waste dumpster on this site did not have either a lid or tarp cover.
- **Failure to provide berms, covers or other containment structures around mortar mix operations.** This is a violation of Part III.G.2.g.i of the NPDES permit and ORC 6111.04 and 6111.07. Mortar mix operations were set up immediately adjacent to the sediment trap. Stockpiles of materials used to create mortar and washwaters from mortar mixing operations were observed in or by the sediment trap, allowing their discharge from the site. The NPDES permit does not authorize the discharge of wastewater such as mortar mix washwater.
- **Failure to implement protective grading practices at the corner of E. College St. and S. Pleasant St.** This is a violation of Part III.G.2.c of the NPDES permit and ORC 6111.04 and 6111.07. The SWP3 indicates that this area is to be graded to drain south to the sediment trap. On the date of inspection, it was graded east where sediment-laden runoff would discharge out onto S. Pleasant St.

Finally, I have confirmed with our Central Office that a Co-Permittee Notice of Intent (co-permittee NOI) was not received from or processed for Fiorilli Construction Inc. Fiorilli Construction was unable to produce an authorization from Ohio EPA for storm water permit coverage at this site. As indicated in Ohio Administrative Code (OAC) 3745-38-06(E), the Director of Ohio EPA, in response to the NOI submission, will notify the applicant in writing that he has been granted general permit coverage to discharge storm water associated with construction activity. Ohio EPA records show that the only co-permittee NOI for this site is from Bontrager Excavating. As such, Fiorilli Construction is operating on this site without NPDES permit authorization and is in violation of ORC 6111.04 and OAC 3745-38-06. All operators must obtain NPDES permit coverage. An operator is defined as any party associated with a construction project 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 an SWP3 for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

On June 17, 2009, I was sent a copy of a signed co-permittee NOI dated January 13, 2009, by Julius Sorma of Fiorilli Construction. I have forwarded it to Michael Joseph in our Central Office. He will be in contact with Fiorilli Construction if any further action is required on this matter.

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Hazardous Waste Program Issues

Additional information is needed before our Division of Hazardous Waste Management (DHWM) can complete their investigation related to this verified complaint. In particular, DHWM requests the following:

- 1) Documentation for newly generated wastes. As stated in Ohio EPA's September 28, 2006 Notice of Violation letter to Josh Rosen of SCA, "If any future waste is generated from this site, including contaminated media, e.g., soil, groundwater, etc., and is sent off-site for management, i.e., treatment, disposal, it must be properly evaluated per Ohio Administrative Code (OAC) rule 3745-52-11." Below are instances where wastes were generated and should have been evaluated in accordance with OAC rule 3745-52-11. Therefore, please provide documentation demonstrating proper waste evaluation for the following:
 - A. On March 5, 2009, soils were excavated from the ground near the sidewalk at 43 E. College Street. The soils were stockpiled on-site and liquids were pumped from the excavation to a tanker truck. The liquids were transported by Fee Corp to Clean Water Limited on March 5, 2009. Soils were later transported off-site by Bontrager Excavating Co. to PETRO Environmental, LLC on March 6, 2009.
 - B. On June 3, 2009, soils were again transported off-site to PETRO Environmental, LLC and liquids were transported to Recycling and Treatment Technologies, LLC. In addition to waste evaluation documentation, SCA is requested to provide information indicating where the contaminated soil and liquids were generated from and how they were managed prior to being sent off-site.
 - C. Spoils from the site (55 E. College Street) were transported off-site by Bontrager Excavating to 45250 Hamilton St. in New Russia Twp for disposal. The spoils may have contained construction and demolition debris, as well as possibly other wastes, e.g., a muffler. The complainant also indicates that soils from the East College Street project were transported off-site to Parcel # 14-00-075-000-026 on SR 303 in Pittsfield Twp and 4674 Wenz Road in Clarksfield Twp (Huron County). In addition to waste evaluation documentation, SCA is requested to provide information indicating where the soils were generated from and how they were managed prior to being sent off-site.
 - D. A soil stockpile is present at the south end of 43 E. College Street. SCA is requested to provide information indicating where and when the soils were generated, any waste evaluation information, how the media is currently being managed, and what the intended future use of the media is.
- 2) Area of March 5, 2009, stockpiled soils. Ohio EPA's September 28, 2006 Notice of Violation letter to Josh Rosen of SCA, strongly encouraged SCA to contact DHWM to discuss potential issues prior to placing hazardous waste on the ground during a cleanup. On March 5, 2009, contaminated soils were stockpiled on-site overnight. There was no barrier placed between the ground and the contaminated soil, but it was covered with a tarp to prevent storm water contact. The contaminated soils were then transported off-site on March 6, 2009.

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- 3) In the future, if SCA discovers any additional underground storage tanks (USTs) located on the property, Ohio EPA recommends that SCA contact the Bureau of Underground Storage Tanks (BUSTR) to determine if the UST is subject to UST requirements, including closure and corrective actions per the UST requirements. If SCA does close or perform corrective action on a UST regulated by BUSTR, SCA must evaluate any waste generated from that action in accordance with OAC rule 3745-52-11 (note that OAC rule 3745-51-04(B)(10) is very specific to what media is excluded from hazardous waste regulation). However, if SCA discovers a UST which contains a hazardous waste, the UST is not subject to UST requirements (see OAC rule 1301:7-9-01(C)) and is subject to the hazardous waste regulations.

In addition to the waste evaluation information requested above in 1.A., SCA is requested to provide documentation demonstrating the location of the stockpiled soils from the March 5, 2009, incident was within an area of contamination. Specifically, SCA is requested to provide information that the stockpile area was not previously remediated prior to the placement of the contaminated soils.

Please provide me with a letter of response indicating the actions you have taken to address the violations noted above and the date that corrective action was completed. Include the additional information requested in this correspondence with your response. Your response must be received **no later than August 10, 2009**.

Failure to list specific deficiencies and/or violations in this communication does not relieve you from the responsibility of complying with all applicable laws, rules and regulations.

If you have any questions regarding storm water program issues, please contact me at (330) 963-1145. For questions regarding hazardous waste program issues, please contact Shannon Ryan at (330) 963-1141.

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/mt

cc: Shannon Ryan, Ohio EPA, DHWM, NEDO
Natalie Oryshkewych, Ohio EPA, DHWM, NEDO
Susan Watkins, VAP Coordinator, Ohio EPA, DERR, NEDO
Michael Joseph, Ohio EPA, DSW, CO
Jeff Baumann, Public Works Director, City of Oberlin
Nancy Funni, Lorain SWCD

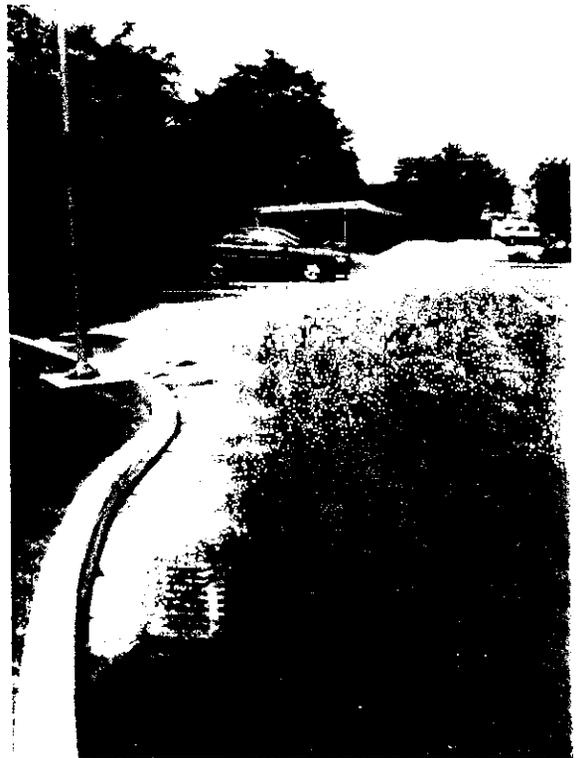


Fig 1-3. A construction entrance has been added at the south end of 43 E. College St. However, the lack of a water bar and off-site tracking has lead to sediment discharges into adjoining storm sewer systems.

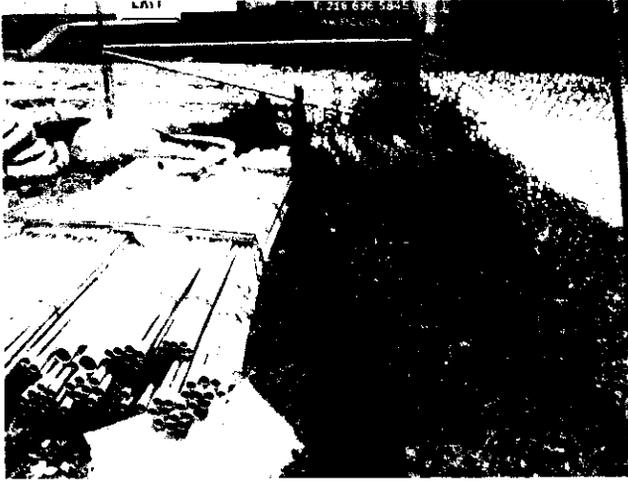


Fig 4 (LEFT). There is a gap between two sections of silt fence near the construction entrance located on 43 E. College St.



Fig 5 (RIGHT). The soil stockpile on the south end of SR 43 has not been stabilized.



Fig 6 (LEFT). The mortar mix area is located immediately adjacent to the sediment trap. Washwater from mortar mix operations is not contained to prevent discharge.



Fig 7 (RIGHT). The sediment trap is not located where shown on the SWP3 nor constructed per the detail drawings shown in the plan.



Fig 8. A sediment-laden discharge to Plumb Creek was noted from the storm sewer system to which the East College Street project drains. It had rained earlier in the day.



Fig 9. Spoils from the East College Street project have been placed as fill on the Kerly property at 45250 Hamilton Street.



Fig 10 & 11. The fill material taken to 45250 Hamilton Rd has been placed in wetlands.

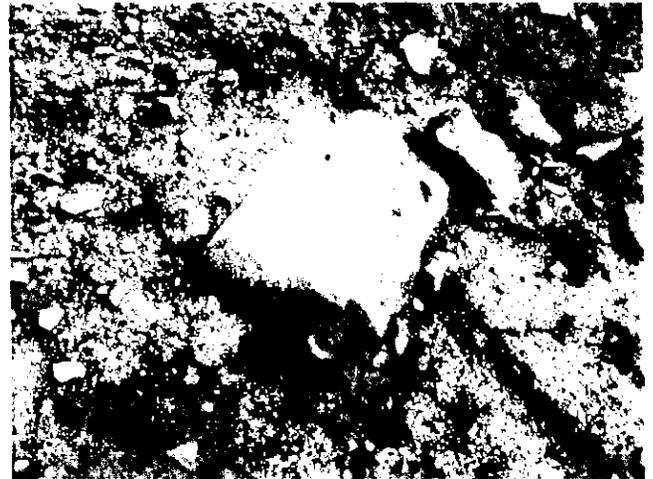


Fig 12 & 13. Block and brick as well as some solid waste is mixed in with the fill material at 45250 Hamilton Rd. Fig 13 (right) shows what appears to be a muffler.