



Environmental  
Protection Agency

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

February 11, 2011

RE: WAYNE COUNTY  
UPPER MUSKINGUM RIVER WATERSHED  
BAUGHMAN TOWNSHIP  
BAU-TR-299-1.39 (Huprick Road)

Mr. Robert Burridge Jr.  
Wayne County Prosecutor's Office  
115 West Liberty St.  
Wooster, OH 44691

Dear Mr. Burridge:

Ohio EPA received your letter dated January 19, 2011 on January 31, 2011 regarding the above referenced site. In that letter, you state that it is the Wayne County Engineer's opinion that the matter regarding post-construction storm water best management practices (BMPs) is closed because I have not responded in writing to Mr. Amstutz's letter dated November 2, 2010. This letter will serve as notice that this matter has not yet been resolved. After receiving Mr. Amstutz's letter, I have communicated with him via telephone on several occasions. It was my understanding that if he was unable to work out a solution with your client, we would set up a meeting with the Wayne County Engineer, Township Trustees and other appropriate parties to determine a path to compliance. Based on your letter dated January 19, 2011, it appears that Mr. Amstutz was unable to work out a solution with your client.

Ohio EPA acknowledges that the BAU-TR-299-1.39 (Huprick Road) project is a small construction activity, however small construction activities are subject to post-construction requirements. Regardless of site size, post-construction BMPs must be selected based on anticipated impacts on the channel and floodplain morphology of the receiving stream, hydrology and water quality. Your client has yet to provide Ohio EPA with a rationale indicating how the ordinary grass swales installed on this project protect channel and floodplain morphology, hydrology and water quality. Ordinary grass swales like those installed on the Huprick Road project do not provide significant water quality benefits. Research conducted at the University of New Hampshire Stormwater Center indicates that vegetated swales, even with the addition of a filter berm consisting of a 50:50 mix of stone and woodchips, have a pollutant removal efficiency of only 58% for total suspended solids and only provide a 52% reduction in average annual peak flow. Thus, it is Ohio EPA's position that ordinary grass swales do not meet the post-construction requirements of the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities #OHC000003.

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As indicated in previous correspondence, there are a number of solutions that are acceptable to Ohio EPA. These solutions include enhanced swales, vegetated biofilters, bioretention cells and any other appropriately-selected post-construction BMP contained in Section 1115 of the Ohio Department of Transportation's Location & Design Manual Volume 2 (dated January 2008). You may also implement grassed swales as described in US EPA's Storm Water Menu of BMPs found online at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=75&minmeasure=5>. Swales designed per these general descriptions and guidance parameters are acceptable to Ohio EPA on a small construction activity. It is my hope that I can meet with your client and determine how these solutions can be retrofitted on the site or obtain documentation that the swales installed comply with the guidance provided herein and in past correspondence.

As such, I will contact your client directly to arrange a meeting with the hope that we can resolve our differences without escalated enforcement. I will propose that we meet the week of March 14 or 21, 2011.

I look forward to working with your client to resolve this matter. If you have any questions, please call me at (330) 963-1145.

Sincerely,



Dan Bogoevski  
District Engineer  
Division of Surface Water

DB/mt

- cc: Roger K. Terrill, Engineer, Wayne County  
Trustees, Baughman Township  
Keith Amstutz, P.E., SJL Inc  
Rob Kastner, Wayne SWCD  
Jay Dorsey, ODNR, Div. of Soil & Water Resources
- ec: Dean Stoll, NEDO, Ohio EPA, DSW  
Mark Mann, Storm Water & Enforcement Section Manager, Ohio EPA, DSW, NEDO  
Harry Kallipolitis, Ohio EPA, CDO, DSW  
Bill Fischbein, Ohio EPA, CO, Legal