Ohio | Environmental Protection Agency

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

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February 15, 2011

RE: LORAIN COUNTY
CITY OF LORAIN
MUNICIPAL STORM WATER PROGRAM – AUDIT RESPONSE
FACILITY #3GQ00119*BG

Mr. Robert Gilchrest
Dept. of Public Service and Safety
City of Lorain
200 West Erie Ave., 7th Floor
Lorain, OH 44052

Dear Mr. Gilchrest:

On January 31, 2011, Ohio EPA received your response to our audit findings regarding the City of Lorain municipal separate storm sewer system (MS4) program. After review of your response, Ohio EPA has the following comments:

Public Education and Public Involvement Program

- The Participation Agreement with the Lorain County Public Information Public Education (LCPIPE) Work Group is not a written acceptance of obligation by the LCPIPE to implement the public education and public involvement program on your behalf. If the City wishes to work with the LCPIPE to meet future public education and involvement requirements of the MS4 program, you must enter into a Memorandum of Understanding (MOU) or other such written agreement which details the services they will provide on your behalf and responsibilities and obligations that will remain with the City of Lorain, e.g., LCPIPE will create at least one educational brochure on a storm water theme per year and the City of Lorain will distribute these materials by including them in utility bills. The MOU must also include an agreement or acknowledgement that LCPIPE is providing this service on the City's behalf.

Construction & Post-Construction Runoff Control Programs

- The City indicated that all city departments will meet to create a process to ensure that the storm water pollution prevention plans (SWP3s) for construction activities within the City are reviewed. Please provide me with a date by when this process will be created and, once developed, please provide me with a written description of this process. As a reminder, the SWP3 review program must encompass both construction site runoff and post-construction storm water management concerns for all construction activities where the larger common plan of development or sale disturbs 1 or more acre of land. The program must include both private and municipal construction activities. The City will remain in violation of Part III.B.4.c of the NPDES permit until this process is developed and implemented.

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- Although the City is contemplating the purchase of software to assist in tracking construction site inspection and post-construction BMP installation and maintenance, the response did not indicate that the inspections required by Part III.B.4.c and Part III.B.5.f of the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Small MS4s #OHQ000002 are now being conducted. Further, the response did not indicate which department is responsible for conducting these inspections. Please clarify if construction site inspections are now being conducted on applicable construction projects at least once per month and if the City is inspecting post-construction BMPs to ensure that they are installed per requirements. Further, please describe the process the City has implemented to ensure long-term maintenance of post-construction BMPs. If any of these required elements of the construction and post-construction programs have not yet been developed, please provide me with a date by when they will be developed and implemented. For elements not yet developed and implemented, the City will remain in violation of the applicable parts of the NPDES permit until these programs are in place.

- The plan to address post-construction BMP requirements on the Brownell Subdivision and Colorado Industrial Park on each individual lot as they are developed may not be adequate to meet post-construction BMP requirements. In particular, if streets, common parking areas or other such common impervious surfaces were installed or redeveloped during the initial development of these projects, post-construction BMPs located on each individual lot will not treat the runoff from these impervious surfaces. If this is the case and a retrofit to address runoff from common impervious surfaces is not feasible, the City will need to look at off-site mitigation of post-construction BMPs. Please review the situation at the Brownell Subdivision and Colorado Industrial Park and determine if this concern is valid for each project. If the concern is valid, then please provide me with your plan to retrofit or provide off-site mitigation. Any off-site mitigation plan should follow the requirements contained on Page 24 of 40 in the Ohio EPA General Storm Water NPDES Permit for Construction Activities #OHC000003.

- The response indicates that the City has adopted Ohio EPA checklists for post-construction BMP inspection and long-term maintenance. Please be aware that Ohio EPA has not developed such checklists. The only site inspection checklist contained on the Ohio EPA storm water program website concerns the inspection of sediment and erosion controls on construction sites. This is not the same as a checklist to inspect the installation of a post-construction BMP and to ensure its long-term maintenance. Standards and specifications and/or checklists on post-construction BMP construction and maintenance are available from a number of other sources, including but limited to:

- ***Managing Stormwater in Your Community:*** *A Guide for Building an Effective Post-Construction Program* (Center for Watershed Protection, 2008) available free online at http://www.cwp.org/documents/cat_view/76-stormwater-management-publications.html.
- United States Environmental Protection Agency ***National Menu of BMPs*** available free online at http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm.
- ***Rainwater and Land Development:*** *Ohio's Standards for Stormwater Management, Land Development and Urban Stream Protection* (Ohio Dept of Natural Resources, 2006) available free online at http://www.dnr.state.oh.us/tabid/9186/default.aspx.
- ***City of Portland Stormwater Management Manual*** (2008) located free online at http://www.portlandonline.com/bes/index.cfm?c=47952.

Please clarify your intention for developing or adopting standards for post-construction BMP installation and maintenance and, if this has not yet occurred, please indicate the date by when such standards will be developed and implemented.

Pollution Prevention and Good Housekeeping for Municipal Operations

- Your response did not include an estimate of the total amount of street sweepings, road kill and miscellaneous solid waste dumped at the Elmwood Nature Preserve. Please provide me with an estimate of the total amount of these materials that must be removed from the site and properly disposed. Beginning with March 2011, please provide me with a monthly update on your progress toward properly disposing of street sweepings, road kill and miscellaneous solid waste from the Elmwood Nature Preserve facility. Include a copy of any manifest or other record of disposal from the disposal facility to demonstrate that this material has indeed been taken to a licensed municipal solid waste landfill. Your report for the previous month should be submitted to me by the 15th of the following month, e.g., the report for March 2011 should be submitted by April 15, 2011. The City will remain in violation of Part III.B.6.d.iii.3 of the NPDES permit until all street sweepings, road kill and miscellaneous solid waste are removed from the Elmwood Nature Preserve and properly disposed.

- As requested, enclosed is a sample pesticide, herbicide and fertilizer application plan provided to Ohio EPA by other regulated MS4 communities in NE Ohio. Further, please be aware that in addition to the obligations imposed on the City in the NPDES permit for small MS4s, the application of pesticide or herbicide in, over or near surface waters of the State is subject to NPDES permitting beginning April 9, 2011. This permitting is being mandated by a federal court decision. Information on how this requirement will be implemented in Ohio is available online at http://www.epa.state.oh.us/dsw/permits/Pesticide_draft_GP_

dec10.aspx. In addition, Ohio EPA intends to provide a presentation on these new requirements at an upcoming storm water education workshop on pollution prevention and good housekeeping scheduled for June 2011. Information on this and other storm water workshops planned for this year will be posted on the Ohio EPA website at www.epa.ohio.gov/ocapp/storm_water.aspx as information becomes available.

- Please provide me with a copy of your memo to department heads indicating that language must be included in contracts to implement storm water BMPs when municipal operations occur via contract. In addition, please submit any model or template language that you have developed for inclusion in contracts.

Please provide the requested response or clarification to the items noted above, in writing, **no later than March 18, 2011**. Except as noted above, Ohio EPA finds your responses to our MS4 program audit satisfactory. Be sure that the Storm Water Management Program (SWMP) is updated in writing, as appropriate, to reflect changes or improvements made to the plan as a result of this audit. Please be aware that failure to comply with the NPDES permit is a violation of Ohio Revised Code 6111.04 and 6111.07 and is subject to penalties of up to $25,000 per day of violation.

If you have any questions, please contact me at (330) 963-1145 or Jason Fyffe at (614) 728-1793.

Sincerely,

Dan Bogoevski

Dan Bogoevski
District Engineer
Division of Surface Water

DB/mt

cc: Dale Vandersommen, Storm Water Program Manager, City of Lorain
Anthony Krasienko, Mayor, City of Lorain
Nancy Funni, Lorain SWCD

ec: Jason Fyffe, Ohio EPA, CO, DSW
Clarissa Gereby, Ohio EPA, NEDO, DSIWM