



OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

October 4, 2013

Patrick and Jackie McGohan
1658 West Alex Bell Road
Dayton, Ohio 45459

CERTIFIED MAIL

**RE: Verified Complaint No. VC12048W06
Alleged Violator: Mark Kaser**

Dear Mr. & Mrs. McGohan:

This letter is intended to serve as a response to the verified complaint, referenced above, that Ohio EPA received on August 30, 2012. Your complaint alleged:

1. Mr. Mark Kaser of 1650 Alex Bell Road, Dayton Ohio, has discharged fill material into Hole's Creek, and rechanneled a portion of Hole's Creek;
2. Mr. Kaser has illegally placed clean hard fill material in regulatory wetlands or floodplains without receiving permission to fill from the Ohio EPA Division of Surface Water and/or the Army Corps of Engineers (USACE);
3. Mr. Kaser has failed to file a Notice of Intent to Fill in order to utilize clean hard fill material which was generated at an offsite location to change the grade on his property; and
4. The fill material utilized by Mr. Kaser consisted of construction and demolition debris and is required to be disposed of properly. The placement of the fill constitutes open dumping and is in violation of Ohio's solid waste laws.

Upon receipt of the verified complaint, staff from Ohio EPA's Division of Surface Water and Division of Materials and Waste Management along with staff from the United States Army, Corps of Engineers performed an investigation of the alleged violations. This investigation included multiple visits to the site.

Relative to allegations 1, 2, and 4, Ohio EPA determined that the project was covered by Nationwide Permit 13 issued by the US Army Corps of Engineers. Ohio EPA has issued a certification to that permit. Accordingly, the property owner did have proper authorization for the project. There were no documented impacts to wetlands, only the stream in question. Further, excavation of the side channel occurred outside of the ordinary high water mark of Holes Creek and is not regulated by USACE/Ohio EPA. Ohio EPA did identify some violations regarding some minor amounts of fill material that would be not be considered appropriate fill material, specifically some asphalt and exposed reinforcing bar. These issues were identified in a Notice of Violation sent to the property owner and Ohio EPA staff confirmed this violation was corrected in inspections of the property on April 25th and June 18th.

Relative to allegation 3, Ohio EPA's investigation did determine that the property owner failed to contact the Montgomery County Health Department in violation of Ohio Administrative Code 3745-400-05(C) which states:

"The person responsible for causing clean hard fill to be used in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, shall provide a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed. The Notice of Intent to Fill shall state the nature of the fill material, the site(s) to be filled, when filling will begin and end, and the telephone number of the notifier. The notification shall be received by each local licensing authority with sites to be filled, at least seven days prior to filling as required by division (F) of section 3714.13 of the Revised Code. The notifier shall provide a new Notice of Intent to Fill if there are any changes in the information required by this rule for notification."

While this violation did occur, the violation by its nature is not ongoing as it is a reporting requirement that is triggered prior to project commencement and the project is now complete.

Because I find that the violations identified in the investigation are not ongoing and are unlikely to reoccur in light of the project's status, I am dismissing your verified complaint. Thank you for bringing this matter to our attention so that it could be adequately investigated and addressed.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00; made payable to "Ohio Treasurer Josh Mandel", which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of

filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor,
Columbus, OH 43215

Sincerely,



Scott J. Nally
Director

cc: Bill Fischbein, Legal
Rachel DeMuth, DSW, CO
Michael See, DSW, CO
Bruce McCoy, DMWM, CO