Ohio Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

December 13, 2011

RE: LORAIN COUNTY
LORAIN COUNTY & REGULATED TOWNSHIPS
MUNICIPAL STORM WATER PROGRAM
REVISED SWMP REVIEW

Mark Rufener, P.E.
K.E. McCartney & Associates
52 North Diamond St.
Mansfield, OH 44902

Dear Mr. Rufener:

Ohio EPA is in receipt of your e-mail sent October 24, 2011, containing documents K.E. McCartney & Associates is preparing to establish a storm water management district in Lorain County. The stated goal of this effort is to provide a more cost-effective and coordinated storm water management program (SWMP) for Lorain County and its regulated townships. Currently, the County and the six regulated townships have their own individual coverage under the Ohio EPA General National Pollutant Discharge Elimination System (NPDES) Permit for Small Municipal Separate Storm Sewer Systems (MS4s).

I provide you with the following comments:

Storm Water Memorandum of Understanding

- **Public Education & Outreach.** The NPDES permit requires communities to educate the public on 5 different storm water messages and to use more than one mechanism to get the message across. The proposed services to be provided by the Lorain County Storm Water Management District (LCSWMD) do not meet these minimums. The MOU calls for only one mechanism by which to deliver education messages, i.e., brochures/fact sheets, and only one real education message, i.e., erosion control fact sheets. The other promised brochures are largely self-promotion that may make the public aware of how money is being spent and the existence of an LCSWMD, but does not result in teaching the public about the impacts of storm water discharges or steps that they can take to reduce pollutants in storm water runoff. Printed materials, whether they are brochures or fact sheets, are a singular mechanism. Mechanisms used by other regulated MS4s in NE Ohio have included: websites, TV commercials, on-hold messaging, yard signs, posters, door hangers, bumper stickers, mascots, t-shirts and other promotional materials, billboards, articles within local newspapers, and public service announcements on the radio.

  Rather than trying to specify the brochures that will be provided, it may be better that this section of the MOU simply state that LCSWMD shall prepare a public education plan for

each NPDES permit term (or annually) that will deliver education materials on 5 different storm water themes or messages and that more than one mechanism shall be used to deliver a given message. The plan will be developed such that 50% of the population within the regulated MS4 will be reached through these efforts over the 5-year permit term. It is my understanding that the Lorain County Public Involvement Public Education (LCPIPE) committee has already determined education themes through 2013 (see attached). Our recommended approach would allow the LCPIPE group to determine the themes, messages and mechanisms to be implemented each permit term (or annually) and could allow alignment with efforts already in place within the NE Ohio region through the NEOPIPE group. If the NPDES permit requires that a certain audience, theme or message be targeted, this should also be stipulated within the MOU. Currently, the NPDES permit requires at least one theme or message to be targeted to the development community. The erosion control factsheets would help satisfy this requirement, but does not fully address the requirement because you have only proposed a singular mechanism to deliver the message.

- **Public Involvement & Participation.** Similar to the previous section, the MOU does not meet the minimum requirements of the NPDES permit. The NPDES permit sets minimum performance standards for public involvement programs at 5 events over the 5-year permit term. The MOU does not stipulate any amount of public involvement and participation activities that will be provided, but rather simply lists possible groups that could provide such activities. It may be better to simply state that the LCSWMD, through the LCPIPE (or other named responsible party), will develop a 5-year (or annual) public involvement and participation plan once every NPDES permit term (or each year). If the LCSWMD intends to assist the townships in putting on these events, the MOU should specify the services or products that LCSWMD will provide and the services or products the townships must provide for themselves.

- **Illicit Discharge Detection & Elimination (IDDE) Program.** The MOU does not meet the minimum performance criteria of the NPDES permit. Although the MOU states that the LCSWMD will develop an IDDE program, it should stipulate that the program will include the following required components of an IDDE program: (a) mapping the MS4 and its outfalls (including annual updates), (b) mapping the location of home sewage treatment systems (HSTSs) that discharge to the MS4 and compiling a list of addresses of those systems, (c) performing dry weather screening of all outfalls by the end of the current NPDES permit term, (d) developing an enforcement protocol and elimination plan for illicit discharges discovered during weather screening and other detection means, and (e) educating public employees, businesses and the general public to identify and report illicit discharges. The MOU includes some of these components, but not all. It identifies which party is responsible for some of these components, but not all. Further, the county agency or department that will be responsible for providing the component needs to be stipulated.

Townships within Lorain County have already signed an MOU with the County in regards to the IDDE program. Please consult with Jerry Innes at the Lorain County Prosecutor's Office to determine if these agreements, in effect, prohibit illicit discharges to township MS4s and allow enforcement of the County regulations when an illicit discharge to a township MS4 is identified. If not, townships will need to enact their own illicit discharge resolutions as you have stated in the MOU. Further, the existing MOUs do not provide specificity as to which county department is responsible for implementation of the program. Typically, the County Board of Health plays a key role in program implementation.

- **Construction Site Runoff Control Program.** Does the LCSWMD have the ability to enter into an MOU with the townships that obligates the Lorain Soil & Water Conservation District (SWCD)? SWCDs are essentially third party service providers to MS4 operators. Their ability to provide services to the County is dependent on a number of factors, not least of which includes, funding by county commissioners and the state, and buy-in from the SWCD Board of Directors. Ohio EPA is aware that these matters, or lack thereof, have affected the ability of staff at the Lorain SWCD to implement the duties required by the construction site runoff control program in the past. If the LCSWMD is going to rely on Lorain SWCD to implement this portion of the program, it needs to ensure adequate funding and support for staff at Lorain SWCD to perform the required duties of plan review, site inspection and initiation of enforcement action. If an entity other than Lorain SWCD will be relied upon to implement required program elements, the County regulations will require amendment.

  The draft MOU does not meet the minimum performance standards required by the NPDES permit. The MOU should stipulate that the Lorain SWCD (or other responsible party) will review the storm water pollution prevention plans (SWP3s) for all (100%) construction activities where the larger common plan of development or sale disturbs 1 or more acre of land to ensure compliance with Lorain County Construction Site Erosion Control regulations. In addition, the Lorain SWCD (or other responsible party) will conduct at least one site inspection per month at active construction sites to ensure compliance with the approved plan or develop an alternative inspection schedule based on the status of construction activities at the site or other formally-adopted prioritization scheme. The MOU should also ensure development of a written enforcement escalation plan that lays out the processes and procedures that will be followed to enforce the County regulations. The county regulations already provide the framework for an enforcement escalation plan, but the intent here is to ensure that all parties required to conduct enforcement have agreed to abide by that framework.

- **Post-Construction Storm Water Management Program.** Similar to the construction site runoff control program, the post-construction storm water management section of the MOU obligates the Lorain SWCD, a third party service provider. Does the LCSWMD have the ability to enter into an agreement that obligates a third party without their consent? Further, the County storm water management regulations name the County

Engineer as a co-administrator of these regulations. The current MOU does not make mention of the Lorain County Engineer and his obligations for this program. It is my understanding that the County Engineer performs certain elements of the post-construction plan review, as-built inspections and at least some long-term maintenance activities.

The draft MOU does not specify the minimum performance standards required by the NPDES permit. In particular, the MOU should specify that the Lorain SWCD and Lorain County Engineer (other responsible parties) will review all (100%) post-construction storm water management plans for all new development and redevelopment where the larger common plan of development or sale disturbs 1 or more acre of land. In addition, the NPDES permit requires the MS4 operator to establish a system to ensure that post-construction BMPs are constructed per the approved plan. Some communities have elected to perform their own as-built inspections while others require the developer to submit an as-built certification from a professional engineer. Verification that post-construction BMPs have been installed per approved plans should occur as part of a final inspection of the site.

The NPDES permit also requires the MS4 operator to develop a system by which to ensure long-term maintenance of post-construction water quality BMPs. The Lorain County Comprehensive Storm Water Management regulations require the developer to submit a long-term maintenance plan, but does not specify the system by which implementation of this plan will be ensured. The MOU should specify which county department or township staff is responsible to ensure the implementation of the long-term maintenance plan. A common system is to require the property owner (or responsible party such as a homeowners association) to submit an annual inspection certification to either the SWCD, County Engineer or Township. However it is my understanding that the Lorain County Engineer has traditionally performed an annual inspection of storm water management structures and takes on maintenance responsibility for at least some of these structures. Whatever the case, the MOU should specify the system, duties and responsibilities to ensure long-term maintenance of post-construction storm water management practices.

Finally, the post-construction storm water management program, and to a lesser degree, the construction site runoff control program, will require revision from time to time as these programs evolve and mature. For example, the US EPA is expected to promulgate effluent limitation guidelines for post-construction storm water management and to set numeric effluent limits on construction site runoff. The local programs will be required to incorporate these new requirements in future generations of the MS4 permit. The MOU should indicate that the LCSWMD will amend the Storm Water Management Program (SWMP) plan and the MOU as needed to comply with any changes in federal or state regulations.

- **Pollution Prevention/Good Housekeeping.** There has been a lot of confusion about which municipal facilities are required to develop storm water pollution prevention plans

(SWP3s). For clarity, it may best to customize this section of the MOU for the County and each township individually and name the specific facilities that are subject to this requirement. Some MS4s may be regulated, but have no municipal operations located within the urbanized area. In these cases, these MS4s are expected to implement pollution prevention/good housekeeping practices when they conduct municipal operations within the urbanized area, but they may not be required to develop an SWP3 for their municipal maintenance facility. Please be aware that the deadline to develop and implement SWP3s for municipal facilities subject to the SWP3 requirement has passed for all regulated MS4s in Lorain County. Thus, if not already developed, the MOU should ensure development of an SWP3, but that particular MS4 is in violation of the NPDES permit at this point.

To improve implementation of SWP3s across the LCSWMD, the LCSWMD may want to assist the Townships and County in performing their annual comprehensive site evaluations, e.g., the LCSWMD could provide an inspector trained to conduct pollution prevention inspections at municipal operations that would review facilities in cooperation with the MS4 operator and coach them to improve compliance.

Also, be aware that the County or Township may operate a facility subject to NPDES permitting under the storm water program for industrial activities. Facilities subject to industrial storm water permitting include, but are not limited to: landfills, airports, marinas, waste transfer stations and steam electric power plants. If the County or Township operates or will operate one of these facilities in the future, the MOU should ensure that the County or Township has or obtains the proper NPDES permit authorization to discharge storm water from these facilities and has or will develop and implement the SWP3 required by the industrial storm water program. This requirement applies regardless of whether or not the facility is located within an urbanized area.

The MOU currently requires Townships to conduct their own employee training; however cost savings and improved training quality may be possible if the training is conducted jointly by the LCSWMD. The LCSWMD may want to consider developing a storm water pollution prevention training program for the County and Townships, i.e., provide scheduled training or develop training agendas. The LCSWMD can develop new or provide existing training materials to County Departments and Townships for their use. Also, be aware that Ohio EPA provides "train-the-trainer" training to MS4 program managers and department heads through our participation on the NE Ohio Storm Water Training Council and has materials that can be used for training. Some of this training is also pertinent for field staff. Please see our Office of Compliance Assistance and Pollution Prevention (OCAPP) municipal storm water webpage at:

www.epa.ohio.gov/ocapp/storm_water.aspx.

Finally, the NPDES permit requires the MS4 operator to provide employee training at least once per year. However, it may not be necessary to conduct training within the same department or with the same staff on an annual basis or to cover the same training

topics each year. This can be reflected in a training schedule developed by the LCSWMD. Also, when conducting a compliance audit, Ohio EPA typically asks to see proof of attendance and a copy of the training materials used. Ensure that record keeping for this MCM includes sign-in sheets, attendance certificates and a copy of any handouts or training materials used.

- **Signatures.** The MOU only provides a signature line for the Lorain County Storm Water Management District. MOUs must be acceptable to all parties affected by it. Additional signature lines are required for the Township, the County and any third party service providers that are obligated by this agreement, e.g., Lorain SWCD or Lorain County General Health District.

General Comment

- If the intent is for the County and Townships to become a singular permittee and implement a common SWMP, the LCSWMD should include, as part of its scope of work, a review and consolidation of the existing SWMPs that the County and each Township has already developed. Only when all parties operate from a common SWMP will there truly be a reduction in duplicated efforts and more cost-effective programs.

I hope that these comments are useful to you as you work to develop the Lorain County Storm Water Management District. If you have any questions, please feel free to contact me at (330) 963-1145.

Sincerely,

Dan Bogoevski

Dan Bogoevski
District Engineer
Division of Surface Water

DB/cs

Cc: Lorain County Commissioners
Jerry Innes, Lorain County Prosecutors Office
Bill Holtzman, Lorain County Engineers Office
Jim Boddy, Lorain County General Health District
Lorain SWCD Board of Trustees
Trustees, Amherst Twp.
Trustees, Carlisle Twp.
Trustees, Columbia Twp.
Trustees, Eaton Twp.
Trustees, Elyria Twp.
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