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

April 3, 2012

RE: SUMMIT COUNTY
CITY OF GREEN
PERMIT NO. 3GQ00065*BG
MUNICIPAL STORM WATER
PROGRAM INSPECTION

Mr. Wayne Wiethe, ALCP
Director of Planning
City of Green
1755 Town Park Boulevard
P.O. Box 278
Green, Ohio 44232-0278

Dear Mr. Wiethe:

Ohio EPA has completed an audit for a portion of your municipal storm water program. Our audit primarily focused on implementation of minimum control measure (MCM) #4: Construction Site Storm Water Runoff Control and MCM #5: Post-Construction Storm Water Management in New Development and Redevelopment. This program is a requirement of the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Small Municipal Separate Storm Sewers Systems (MS4s) OHQ000002 and Ohio Administrative Code 3745-39.

On February 21 and 23, 2012, Ohio EPA met with you and other representatives of the City of Green to determine compliance with the NPDES permit and the Storm water Management Plan (SWMP), submitted by the City in March 2003. In performing this audit, Ohio EPA implemented a modified version of the Municipal Storm Water Program Evaluation Guide developed by the United States Environmental Protection Agency.

Attached are the Municipal Storm Water Program Evaluation, File Review, and Field Inspection Worksheet(s) completed for your community. Please review these documents in detail to determine specific elements where your construction and post-construction programs need improvement. In addition, you will find comments suggesting ways to improve your MS4 program. The following is a summary of our audit findings:

Violations

Construction Site Storm Water Runoff Control

1) **Failure to develop a construction site runoff control program that includes storm water discharges from parcels less than 1-acre but part of a larger common plan of development or sale.** In particular, the City of Green does not require plan review or provide site inspection of construction on individual building lots within subdivisions. Under ordinance 1224.09 (2), this is specifically exempted from a permit requirement. This is a violation of Part III.B.4.a of the Ohio EPA General Storm Water NPDES permit #OHC000002. Furthermore, your program does not include storm water discharges from construction activities operated by

state and federal agencies such as the Federal Aviation Administration (FAA) and the National Guard. We assert that municipalities do have the right to regulate discharges from these sites to their MS45 system. Please refer this issue to your legal counsel if you have any reservations concerning this issue.

2) **Failure to update construction ordinance(s) within two years of permit renewal.** This is a violation of Part III.B.4.a.i of the Ohio EPA General Storm Water NPDES permit #OHC000002. The City was required to revise their ordinances to be equivalent with the technical requirements set forth in the Ohio EPA NPDES General Storm Water Permits for Construction Activities, OHC000003. This was to be completed within two years of when the City's coverage under the Municipal Separate Storm Sewer Systems (MS4) general permit was granted (June 17, 2009). Relying on approval of the Storm Water Pollution Prevention Plan (SWPPP) by the Summit Soil and Water Conservation District (SWCD) does not meet this requirement. Regarding Part III.B.4.a.i, the Ohio EPA recommends the City look to adopt the Chagrin River Watershed Partners model ordinances for erosion and sediment control and comprehensive storm water management, located at www.crwp.org under the Storm Water Phase II link. Please provide Ohio EPA with a plan of action and time frame for passing the aforementioned ordinance updates.
3) **Failure to require construction site operators to implement appropriate erosion and sediment control BMP's.** This is a violation of Part III.B.4.a.ii of the Ohio EPA General Storm Water NPDES permit #OHC000002. Ordinance 1224.09 specifies that a SWPPP be submitted with the Land Disturbance Permit (LDP) Application and also contains approval criteria for the LDP, but there is nothing specific that requires them to implement the BMP's.
4) **Failure to require construction site operators to control waste such as, but not limited to, discarded building materials, concrete wash truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.** This is a violation of Part III.B.4.a.iii. Relying on approval of the SWPPP by the Summit SWCD does not meet this requirement.
5) **Failure to escalate enforcement to achieve compliance with the local construction site ordinance.** This is a violation of Part III.B.4.a.vi of the Ohio EPA General Storm Water NPDES permit # OHQ000002. Under ordinance 1224.09 Violations, only recently enacted August 24, 2011, monetary and civil penalties are specified for violations to this chapter and the SWPPP. Noted was that this ordinance effectively prohibits the Summit SWCD from issuing Notice of Violations (NOV). Our file review and interview revealed that the City is deficient in written NOVs under City of Green letterhead for non-compliance with ordinance 1224.09. NOVs are not being issued when the Summit SWCD informs the City of violations of the approved SWPPP at construction sites such as Heritage Crossings of Green, Akron General, Stoney Creek Estates Phase III, and the Akron Canton Airport ARFF. Stop work orders or court actions as permitted by ordinance 1224 are not being implemented. During the file review, Ohio EPA revealed that the Fred Martin Nissan project expanded to over an acre with the possible filling of wetlands. Summit SWCD requested work to stop, and comply with local, state, and federal regulations. This was brought to the City' attention in November 2011. No stop work order was issued by the City. The City must develop a clear enforcement escalation protocol so as to provide inspectors, the City Engineer, Planning Director and others with a clear policy on when to take enforcement to the next level

and how that is to be achieved. The City also needs to ensure written inspection reports are sent to the legal entity which holds NPDES permit-coverage and the entity responsible for most of the earth disturbance and installation and maintenance of erosion and sediment controls. As mentioned above letters from the SWCD cannot be considered NOVs unless the community's ordinance specifically gives the SWCD enforcement authority. Therefore, the SWCD is simply notifying the community that there are compliance issues on the site, but they have no inherent enforcement authority in Green. If the City wishes to continue using the SWCD for inspections, one option would be for the City to attach a cover letter on Green letterhead summarizing the key violations and deficiencies found during the inspection and a time frame in which the work must be completed.

Post Construction Storm Water Management in New Development and Redevelopment

6) **Failure to develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program shall ensure that controls are in place that will prevent or minimize water quality impacts.** Ordinance 1224.09 does not require treatment for the water quality volume.
7) **Failure to develop and implement strategies, which include structural BMP's appropriate for your community.** This is a violation of Part III.B.5.b. of the Ohio EPA General Storm Water NPDES permit #OHC000003. There is no post construction ordinance that meets or exceeds the requirements in General Construction Permit OHC000003 Part III.G.2(e) for establishing and choosing Best Management Practices (BMPs) to treat the water quality volume from construction sites.
8) **Failure to update post-construction ordinance(s) within two years of permit renewal.** This is a violation of Part III.B.5.c of the Ohio EPA General Storm Water NPDES permit #OHC000002. The City was required to revise their ordinances to be equivalent with the technical requirements set forth in the Ohio EPA NPDES General Storm Water Permits for Construction Activities, which include the following EPA NPDES Permits: OHC000003. This was to be completed within two years of when the City's coverage under the MS4 general permit was granted (June 17, 2009). For example, no inspections are being conducted to ensure post construction BMP's are installed per the approved plan.
9) **Failure to submit a Notice of Termination (NOT) within 45 days of reaching final stabilization on municipal construction projects.** This is a violation of Part IV.A of the Ohio EPA General Storm Water NPDES permit #OHC000003. During the interview the City indicated that three active sites in our records have been completed with no NOT filed. Please submit an NOT for these projects that are completed.

Deficiencies

1) The City consulting firm EDG (formerly Floyd Browne) as well as the Summit SWCD maintains a majority of records associated with the City of Green construction and post-construction programs and a record of the final approved plans and any

revisions. During the interview on the 21st, this became apparent and when the approved SWPPP for the sites selected for follow-up on the 23rd had to be obtained from EDG's office. We recommend that the City of Green maintain a set of all storm water related records in the Engineering or Service Department, as appropriate. The arrangement with EDG could be terminated at any time and the City may not have access to the records in the future. This also provides a back-up in case Summit SWCD or the City loses records due to computer failure or catastrophic losses. This is particularly important for long-term maintenance plans for post-construction BMPs.

2) Riparian and Wetland Setback Ordinance: The Riparian and wetland setback ordinance (1229.13) does not require protection of native vegetation within the riparian area. We refer you to the Chagrin River Watershed Partners and their document titled "Riparian Setbacks: Technical Information for Decision Makers". This can be found at the following web site: http://www.crwp.org/model_ordinances/riparian_model.htm.
3) Please be aware that performance standards established under Part III.B.4.c of the NPDES permit require the City to inspect all construction sites where one or more acres of land are disturbed. These sites must be inspected when construction begins and at least monthly thereafter as long as the project is active. In order to ensure that this performance standard is met, Ohio EPA strongly recommends the City maintain their own list of active construction sites and regularly compare this list with the SWCD database to ensure all projects are approved and are being inspected. If the City continues to handle municipal projects through the Engineering Department, care must be taken to include these sites in the overall data base.
4) Our records show that the City of Green has 68 active projects permitted under the Ohio EPA General Storm Water NPDES Permit for Construction Activities .during the interview it was indicated that approximately 41 sites may have been completed. Until recently, the construction sites were not being notified of the requirement to file an NOT. The current Summit SWCD inspector is now including a NOT form with the final inspection letter. Protocol should be established by the City during the final inspection that includes notifying the general permit holder that a NOT must be filed.
5) The City did not provide sample contract language for active public projects not developed or inspected in-house. Contracts with third party planners and engineers should include language that specifies that sediment and erosion control and post-construction storm water BMPs must be incorporated into the design. In addition, if third party inspectors are to be used, language to ensure minimum inspection, maintenance, and reporting requirements should be specified in the contract.
6) The City of Green has not established standards for post-construction BMP selection and design for small construction activities (i.e., where the larger common plan of development or sale disturbs five acres), but should consider doing so to minimize arguments and negotiations on what constitutes an acceptable BMP. Although Ohio EPA does require post-construction BMPs on small construction sites, the requirements are not prescriptive. Thus, reliance on Ohio EPA requirements for small construction sites may not lead to the types of BMPs the City would prefer to see.
7) The City has not fully developed their program to ensure adequate long-term operation and maintenance of privately owned post-construction BMPs. Developers

are required to enter Long-Term Maintenance agreements as part of approving the SWPPP. The City has not taken much of a stand on enforcement for post-construction compliance issues and could use improvement in this field. Post construction BMP's are supposed to be tracked on the MS4 map.

8) The City of Green should review their ordinances to facilitate the use of non-structural and low-impact development (LID) practices. To promote use of LID practices, the City should consider adding a runoff reduction requirement to their post-construction ordinance or allow a reduction in the size of storm water management structures if LID is used. Planning and zoning codes should be reviewed to encourage smart growth principles in compact neighborhoods or mixed-use development such as walk-able neighborhoods, vertical development, and infill development along corridors served by public transportation, as well as allowing the use of meadow grass or low-maintenance vegetation, where appropriate. The City should also look into updating their parking codes to reduce the amount of impervious surfaces created by current parking requirements. Permeable pavement is a key tool to reducing impervious area and should be more broadly promoted.
9) It was apparent during the review of the files for the construction sites chosen that the City of Green is not providing follow-up to the Summit SWCD letters and e-mails, and phone calls for these sites. When the City is informed that there are compliance issues at construction sites a record of the communication as well as any City response should be documented in the file. This is a basic responsibility of all co-permittees in Summit County or any other county in the State of Ohio when complying with the County SWMP and the City MS4 NPDES permit.
10) We would like to stress that there needs to be a clear chain of command defining exactly what department and personnel are responsible for overseeing compliance with the general storm water permit at the private construction sites. This department/personnel should be trained sufficiently in SWPPP's, act as a point person for the City when interacting with Summit SWCD and the construction site permit holder, and be able to facilitate the appropriate enforcement action with the City prosecutor when needed.

On a separate issue, we noted that the City does not have an illicit discharge ordinance. This is a violation of Part III.B.3.d of the Ohio EPA General Storm Water NPDES permit #OHQ000002. The City was required to enact this ordinance no later than April 3, 2008. The ordinance must satisfy the requirements set forth in Part III.B.3.d of the Small MS4 general permit. A model illicit discharge ordinance is available from either Chagrin River Watershed Partners at www.crwp.org or the Northeast Ohio Area wide Coordinating Agency at www.noaca.org.

Action Items

1) We recognize that ordinances take time to enact due to procedural constraints. You are requested to provide in writing to this office an acceptable time frame to enact the construction ordinance update and also the post construction ordinance. This proposed time frame is to be submitted no later than April 30, 2012.
2) Respond in writing to this office no later than May 31, 2012 with your intentions to resolve all other violations and deficiencies noted above.

Failure to address the above listed Action Items may result in an enforcement action to be initiated by this office. If you have any questions, please contact me at (330) 963-1136 or by e-mail at phil.rhodes@epa.state.oh.us.

Sincerely,

Phil Rhodes

Philip P. Rhodes, P.E.
Environmental Specialist II
Division of Surface Water

PPR/cs

Enclosure

cc: Paul Pickett, City Engineer, City of Green

ec: Brian Prunty, Environmental Resource Specialist, Summit SWCD