



**Environmental
Protection Agency**

John R. Kasich, Governor

Mary Taylor, Lt. Governor

Scott J. Nally, Director

August 1, 2012

RE: LORAIN COUNTY
CITY OF ELYRIA
PERMIT NO. 3GQ00082*BG
MUNICIPAL STORM WATER
PROGRAM INSPECTION

John Schneider
Assistant City Engineer
City of Elyria
131 Court St., Suite 303
Elyria, OH 44035

Dear Mr. Schneider:

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 July 11, 2012, Ohio EPA met with you and other representatives of the City of Elyria 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

- **Failure to develop a program to ensure adequate long-term operation and maintenance (O&M) of post-construction best management practices (BMPs).** This is a violation of Part III.B.5.d and Part III.B.5.f of the Ohio EPA General Storm Water NPDES permit # OHQ000002. The City must develop a program to ensure the long-term maintenance of all publicly-owned post-construction BMPs and those privately-owned post-construction BMPs within developments that obtained NPDES permits on or after April 21, 2003. Ohio EPA recommends that each facility be inspected at least once a year either by the City or the party responsible for long-term maintenance. The City is working towards compliance with this requirement, but they have not finalized their O&M standards, long-term maintenance agreements, or the inspection forms. The City's code

(Chapter 960.28: Post-Construction Operation and Maintenance Agreements) requires the submittal of an operation and maintenance agreement from those responsible for maintaining privately owned post construction BMP's, however the City has not been consistent with this requirement. ***Please provide Ohio EPA with a timeframe for which post-construction long-term maintenance processes and procedures will be finalized, as well as a copy of it once the program is finalized.***

- **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. Our file review and interview revealed that the City is deficient in written Notices of Violation (NOV) under City of Elyria letterhead for non-compliance with Chapter 960 of the municipal code (Storm Water Management). NOV's for non-compliance are expected to exist, whereas e-mails to developers simply won't have the same impact. A formalized written enforcement escalation plan was provided to Ohio EPA during the interview process, yet the file review indicated that this enforcement escalation procedure has not been followed very closely in the past. The City must follow this procedure for every applicable project within the City, whether public or private. ***Please indicate why the City has not been following the formalized enforcement escalation procedure in the past. If this procedure simply is not possible to follow due to staffing limitations, etc. please develop and submit an enforcement escalation plan to Ohio EPA which includes a procedure the City is capable of following from this point forward.***

- **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. Our records show that the City of Elyria still has an active permit under the Ohio EPA General Storm Water NPDES Permit for Construction Activities at five (5) municipal sites, which were completed and have reached final stabilization. ***Please submit an NOT for the following projects immediately:***
 - East River Street, #3GC04759*AG:
 - Middle Avenue Sanitary Sewer Phase II, #3GC04755*AG:
 - W. River Rd. Lift Sta. Rehab FM Replace & Griswold Rd., #3GC04839*AG:
 - Westside Water Line Replacement Project, #3GC05344*AG: and
 - LOR-20/57-16.93/16.17, #3GC03688*AG.

- **Failure to conduct site inspections at active construction sites at a frequency of at least once per month.** This is a violation of Part III.B.4.c of the Ohio EPA NPDES General Permit #OHQ000002 for small MS4s. Active construction sites must be inspected at a frequency of at least once per month for compliance with NPDES permit requirements unless you document your procedures for prioritizing inspections such as location to a waterway, amount of disturbed area, compliance of site, etc. within your SWMP (Storm Water Management Plan). ***Please describe why active construction sites have not been inspected for NPDES permit compliance at least once per month in the past, and indicate whether the City will amend its SWMP to include prioritization standards or simply begin to conduct inspections at least once per month in the future.***

Deficiencies

- Ohio EPA recommends that some of the language within the City ordinance should be re-constructed in order to encourage the use of the following:
 - Riparian and Wetland setback protection;
 - Runoff reduction (i.e. infiltration, mitigation of recharge volume, etc.);
 - "Green" infrastructure (i.e. rain gardens, pervious pavers, etc.); and
 - Balanced growth principles (i.e. conservative design, native vegetation, etc.).Post-construction storm water management, land use planning and building and zoning codes must be linked to create a meaningful storm water program. A good MS4 program goes beyond the WQv requirement. The storm water program manager must work with the building commissioner to affect development patterns in their community that negatively impact storm water quality.
- If the City wishes to use a general reference to "minimum Ohio EPA requirements" in their code (due to the fact that these standards are updated every five years), the ordinance **must** be updated to reflect that control measures must comply with the **most current** standards required by Ohio EPA. In addition, it is very important that those responsible for the plan review process as well as storm water inspections are familiar with the **most current** Ohio EPA requirements to ensure appropriate plan review and site inspection procedures are conducted. In addition, it is recommended that the ordinance be updated to distinguish between active construction BMPs and post construction BMPs rather than stating "control practices" in general.
- The City currently does not have any sort of database to track active construction sites and post construction BMP's within the City (other than an Excel spreadsheet). It is recommended the City review software to track such information for easy access by inspectors as the City's storm water program continues to grow and additional inspectors are utilized for compliance inspections.
- Although the City has been providing numbers to Ohio EPA in the Annual Report, it does not appear that the City has a system to track construction site inspection findings, enforcement actions, complaints, or NOI submittal cohesively in order to accurately generate the numbers reported to Ohio EPA. **Please clarify how the City has been generating the numbers reported to Ohio EPA required under Part III.B.4.d of the NPDES permit, and how the City plans to generate these numbers in the future.**
- The City's storm water public education and outreach program should include more than one mechanism and target at least five different storm water themes over the permit term. At least one of the themes should *target the development community*, as required by Part III.B.1.c of the NPDES permit. **This is a reminder that this requirement must be met no later than January 29, 2014.**
- Ohio EPA recommends that the City's permissible exclusions from Chapter 960: *Storm Water Management* is updated to reflect the exclusions allowable from NPDES permit requirements. Since the City's standards directly reflect the current minimum requirements of the Ohio EPA, the allowable exclusions from compliance with these standards should be consistent with Ohio EPA as well. **Please refer to the attached interview for a list of activities excluded from NPDES permit requirements.**
- Although the City does not explicitly prohibit low-impact development and green infrastructure, it is simply a design alternative and is not required or encouraged. Ohio EPA expects future storm water regulations to require a certain amount of on-site storm water infiltration, capture and reuse. Low-impact development codes will help you meet these requirements. The City should consider strengthening the local development code and integrating standards which not only allow for these types of structures to be

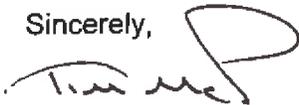
implemented but explicitly encourages or requires it. Although some LID practices have been used in the past, they have not been incorporated to the extent possible to meet post-construction requirements. LID practices that could have been incorporated into the design of new projects or redevelopments, had the City asked include green roofs, sidewalk or parking lot bioretention, permeable pavers, cisterns and other rainwater harvesting techniques.

- The City has not yet completed mapping of the entire MS4 system. As a reminder, the City must complete mapping within five (5) years of NPDES permit renewal, i.e., September 28, 2014.
- Although the City code does not explicitly prohibit certain balanced growth principles such as conservative design and retaining open space, there is little in the code to incentivize it or make it the standard requirement. Codes that can be improved to make them more friendly to storm water program goals include, but are not limited to: use of low-maintenance native vegetation, identifying areas where conservation development and low-impact development practices must be implemented, providing incentives for infill development and redevelopment, increasing vertical development limits, and providing incentives for development and redevelopment along corridors with public transportation, walking and biking options.
- During the interview, it was observed that the City has been responsible for inspecting some of their own municipal projects that were designed in house. Ohio EPA recommends that in order to *avoid a conflict of interest, the firm or department that designed the SWP3 for a site should not also inspect that site for compliance.*

Please review my comments and provide me with a letter of response indicating the actions you will take to address my concerns. **Your response should be received no later than September 1st, 2012.** Please note that this response does not replace the requirement to submit an Annual Report. Your annual report for 2012 will be due on April 1, 2013.

If you have any questions, please contact Dan Bogoevski, Ohio EPA, Division of Surface Water, Northeast District Office at (330) 963-1145 or dan.bogoevski@epa.state.oh.us.

Sincerely,



Tim McParland
Assistant to the District Engineer
Division of Surface Water

TP/cs

Cc: Holly C. Brinda, Mayor, City of Elyria w/ Enclosure
Kathy McKillips, Storm Water Coordinator, City of Elyria w/ Enclosure

Ec: Dan Bogoevski, Ohio EPA, DSW, NEDO
Stacy Faile, AECOM