

**Environmental  
Protection Agency**

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

September 17, 2012

**RE: CUYAHOGA COUNTY  
CITY OF MIDDLEBURGH HEIGHTS  
CONSTRUCTION STORM WATER  
TRENTON TRAIL CIRCLE**

**NOTICE OF VIOLATION**

John Flynn  
James E. Sawyer Consulting Engineer  
7377 Meadowhaven Dr.  
Chippewa Lake, OH 44215

Dear Mr. Flynn:

On August 28, 2012, I visited the above referenced subdivision in response to a citizen complaint. I was accompanied by Erm Gomes, also of the Ohio EPA Division of Surface Water. Several homeowners within the Indian Creek Subdivision are concerned about the general appearance and perceived lack of maintenance of the detention basin that serves the Trenton Trail Circle subdivision. This detention basin was an existing structure that has been retrofitted into a dry extended detention basin with forebay and micropool to provide treatment of the Water Quality Volume (WQv). It appears this modification was made to satisfy the post-construction requirements of the Ohio EPA General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Associated with Construction Activities #OHC000003. Our records indicate that James E. Sawyer Consulting Engineer obtained coverage under this NPDES permit on March 18, 2009, and the Trenton Trail Circle subdivision was issued a facility permit #3GC04272\*AG.

To review the complaint received from the citizens, Ohio EPA requested a copy of the approved storm water pollution prevention plan (SWP3) from Cuyahoga SWCD. Cuyahoga SWCD acts as the SWP3 review agent for the City of Middleburgh Heights under the city's municipal storm water program. To date, Ohio EPA has not received a copy of the requested plan. As such, please submit a copy of the approved SWP3 for this project so that we can complete our investigation of the citizen complaint. Include a copy or description of the planting plan for the basin and the long-term maintenance plan. We did note that disturbed areas within the detention basin had recently been mulched; however, we noted some invasive vegetation that may not be intended. In addition, we noted algae growth within the pond, an indication that excess nutrients are discharging to the pond. Sources of excess nutrients may include over-application of lawn fertilizers, pet waste or failing or discharging septic systems. Please consult with the City of Middleburgh Heights to determine if there are any known illicit discharges to the pond and what action the city is taking under its municipal storm water program to eliminate those discharges or educate its citizens about lawn care and pet waste management.

In regards to site conditions, our inspection revealed the following violations of the NPDES permit:

- **Failure to Notify.** This is a violation of Part II.B of the NPDES permit and Ohio Revised Code (ORC) 6111.04 and Ohio Administrative Code (OAC) 3745-39-04. The term "Operator" is defined as any party associated with a construction project that meets either of the following two criteria:
  - (a) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
  - (b) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with the storm water pollution prevention plan (SWP3) or other permit conditions.

James E. Sawyer is the consulting engineer for this project and does not appear to meet the definition of "operator". The developer of the project and house building companies are parties that meet the definition of "operator". To correct this violation, the NPDES permit must be transferred to the developer and the homebuilder must submit an Individual Lot Notice of Intent (Individual Lot NOI) to Ohio EPA. The general permit transfer form and Individual Lot NOI can be located on the Ohio EPA website at <http://epa.ohio.gov/dsw/permits/gpfact.aspx#for%20more%20information>. There is no fee to file either of these forms.

- **Failure to protect active storm drain systems from sediment-laden runoff.** This is a violation of Part III.G.2.d.iv of the NPDES permit and ORC 6111.04 and 6111.07. Sediment was evident at the storm drain in front of the home currently under construction (see Fig 1). Inlet protection has not been provided on the storm drain. Install storm drain inlet protection and/or install silt fence or other perimeter sediment control along the front of the lot with active house construction.
- **Failure to maintain sediment controls in a functional condition until all upslope areas have been permanently re-stabilized.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. Although storm drain inlet protection has been provided on yard inlets at the back of the house under construction, one of the structures was damaged and non-functional on the date of inspection (see Fig 2). Repair the inlet protection.
- **Failure to initiate temporary stabilization of disturbed areas within 7 days of last disturbance if those areas will remain idle for 21 days or longer.** This is a violation of Part III.G.2.b.i of the NPDES permit and ORC 6111.04 and 6111.07. A number of soil piles were observed at the back of the home currently under construction (Fig 4). These piles appear to have been on site for some time (longer than 21 days). Other disturbed areas on the lot with active house construction are also subject to this requirement if they are not expected to be reworked within 21 days of last disturbance. Disturbance means earth-disturbing construction activity, e.g., grading, grubbing, clearing, filling or excavating. Please review the operations on this lot and temporarily stabilize disturbed areas, as required to comply with the NPDES permit.

John Flynn  
James E. Sawyer Consulting Engineer  
September 17, 2012  
Page 3

Please provide me with a letter of response indicating the actions you have taken to address the violations noted above. Include a copy of the approved SWP3 with your response. Your response must be received **no later than October 1, 2012**. Failure to take corrective action can result in enforcement action. Violations of ORC 6111 are punishable by fines of up to \$10,000 per day of violation.

If you have any questions, please contact me at (330) 963-1145.

Sincerely,

  
Dan Bogoevski  
District Engineer  
Division of Surface Water

DB/cl

cc: Gary Starr, Mayor, City of Middleburg Heights  
Mike McKay, Engineer, City of Middleburg Heights  
Todd Houser, Cuyahoga SWCD  
Laura Travers, Cuyahoga County Board of Health