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

June 1, 2012

Re: Adams County
DP&L Carter Hollow Storm Water
Construction Activity
Notice of Violation
0GC01604*AG

Mr. John Hendrix
DP&L Stuart Station
745 US Route 52
Aberdeen, Ohio 45101

Mr. Harry McCann
DP&L Stuart Station
745 US Route 52
Aberdeen, Ohio 45101

Dear Sirs:

On April 30, 2012, May 14, 2012, and May 29, 2012, I conducted an inspection of your project. The purpose of the inspections was to determine the compliance status of the site with the National Pollutant Discharge Elimination System (NPDES) permit for discharges of storm water associated with construction activity. The inspections were conducted under the provisions of Ohio's water pollution control statutes, Ohio Revised Code (ORC) Chapter 6111. The following areas need to be addressed:

1. **Part III.G.2.b.** of the permit states that the SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils unless an exception is approved in accordance with Part III.G.4. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, use of construction entrances and the use of alternative ground cover.

   Part III.G.2.b.i. of the permit requires that disturbed areas must be stabilized as specified in the following text below. Permanent and temporary stabilization are defined in Part VII of the Permit.

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2195 Front Street
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Permanent Stabilization

Any areas that will lie dormant for one year or more must be stabilized within seven days of the most recent disturbance.

Any areas within 50 feet of a surface water of the State and at final grade must be stabilized within two days of reaching final grade.

Any other areas at final grade must be stabilized within seven days of reaching final grade within that area.

Temporary Stabilization

Any areas within 50 feet of a surface water of the State and at final grade must be stabilized within two days of reaching final grade if the area will remain idle for more than 21 days.

For all construction activities, any disturbed areas that will be dormant for more than 21 days but less than one year, and not within 50 feet of a surface water of the State must be stabilized within seven days of the most recent disturbance within the area.

Disturbed areas that will be idle over winter must be stabilized prior to the onset of winter weather.

Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

PART VII.H of the permit states. "Final stabilization" means that either: 1. All soil disturbing activities at the site are complete and a uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of at least 70 percent cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent stabilization measures (such as the use of landscape mulches, rip-rap, gabions or geotextiles) have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion;

Portions of your site did not meet the requirements noted above. Assess the entire site and stabilize disturbed areas immediately. This violation was noted on April 30, 2012, May 14, 2012 and May 29, 2012. Please inform me when the stabilization requirement has been met.

2. **Part III.G.2.c.** of the permit states Runoff Control Practices. The SWP3 shall incorporate measures which control the flow of runoff from disturbed areas so as to prevent erosion from occurring. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices

shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

Part III.G.2.d.iii of the permit states Silt Fence and Diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour downslope of the disturbed area. This permit does not preclude the use of other sediment barriers designed to control sheet flow runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in the table below.

Maximum drainage area (in acres) to 100 linear feet of silt fence compared to Range of slope for a particular drainage area (in percent)

0.5	< 2%
0.25	> 2% but < 20%
0.125	> 20% but < 50%

Placing silt fence in a parallel series does not extend the size of the drainage area. Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.

Portions of your site did not meet the requirements noted above. Some drainage patterns near your creek crossings over Carter Hollow were allowing sediment laden water to enter waters of the state. This violation was noted on April 30, 2012 and May 14, 2012.

3. **Part III.G.2.d.** of the permit states Sediment Control Practices. The plan shall include a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, earth diversion dikes or channels which direct runoff to a sediment settling pond and storm drain inlet protection. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.

   Part III.G.2.d.i of the permit states Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the

topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.

ii. Sediment settling ponds. A sediment settling pond is required for any one of the following conditions:

- concentrated storm water runoff (e.g., storm sewer or ditch);
- runoff from drainage areas, which exceed the design capacity of silt fence or other sediment barriers;
- runoff from drainage areas that exceed the design capacity of inlet protection; or
- runoff from common drainage locations with 10 or more acres of disturbed land.

The permittee may request approval from Ohio EPA to use alternative controls if the permittee can demonstrate the alternative controls are equivalent in effectiveness to a sediment settling pond.

The sediment settling pond volume consists of both a dewatering zone and a sediment storage zone. The volume of the dewatering zone shall be a minimum of 1800 cubic feet (ft3) per acre of drainage (67 yd3/acre) with a minimum 48-hour drain time for sediment basins serving a drainage area over 5 acres. The volume of the sediment storage zone shall be calculated by one of the following methods: Method 1: The volume of the sediment storage zone shall be 1000 ft3 per disturbed acre within the watershed of the basin. OR Method 2: The volume of the sediment storage zone shall be the volume necessary to store the sediment as calculated with RUSLE or a similar generally accepted erosion prediction model. The accumulated sediment shall be removed from the sediment storage zone once it's full. When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not co-mingled with sediment-laden runoff. The depth of the dewatering zone must be less than or equal to five feet. The configuration between inlets and the outlet of the basin must provide at least two units of length for each one unit of width (> 2:1 length:width ratio), however, a length to width ratio of 4:1 is recommended. When designing sediment settling ponds, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls must be used where site limitations would preclude a safe design. The use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal is encouraged.

At the time of the inspections corrective actions had been implemented concerning this violation but not completed therefore you were still in violation of this portion of the permit. You were in violation of this requirement up until May 24, 2012, when the last sediment pond was installed.

4. **ORC 6111.04 (A)(1)** states that, No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

ORC 6111.04 (A)(2) states that, Such an action prohibited under division (A)(1) of ORC 6111.04 is hereby declared to be a public nuisance.

Divisions (A)(1) and (2) of this section do not apply if the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in sections 6111.01 to 6111.08 of the Revised Code, or if the person's application for renewal of such a permit is pending.

Revised Code 6111.01 defines "waters of the state" as: all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters.

Sand, silts, sediments, and "dredged or fill material," as that term is defined in OAC 3745-32-01, constitute "other wastes," as that term is defined in R.C. 6111.01. Sand, silts, sediments, and dredged or fill material entering waters of the state as a result of human activities, including but not limited to construction, are "suspended solids or other substances" that will adversely affect aquatic life, in violation of OAC 3745-1-04.

Placing "other wastes" into "waters of the state" constitutes "pollution" as that term is defined in ORC Section 6111.01(A).

DP&L is violating 6111.04 at the Carter Hollow project. Stream impacts were noted in Carter Hollow during inspections on April 30, 2012, May 14, 2012 and May 29, 2012.

5. **PART III**. A Of the permit states, Storm Water Pollution Prevention Plans. A SWP3 shall be developed for each site covered by this permit. For a multi-phase construction project, a separate NOI shall be submitted when a separate SWP3 will be prepared for subsequent phases. SWP3s shall be prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. The SWP3 shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction activities. The SWP3 shall be a comprehensive, stand-alone document, which is not complete unless it contains the information required by Part III.G of this permit. <u>In addition, the SWP3 shall describe and ensure the implementation of best management practices (BMPs) that reduce the pollutants in storm water discharges during construction and</u>

pollutants associated with post-construction activities to ensure compliance with ORC Section 6111.04, OAC Chapter 3745-1 and the terms and conditions of this permit.

Your initial SWP3 failed to meet this requirement. Better planning and coordination should have taken place to ensure compliance with the permit. What actions are you taking to ensure that this problem will not continue into the future?

6. **Part III.G.2** of the permit states, Controls. The SWP3 must contain a description of the controls appropriate for each construction operation covered by this permit and the operator(s) must implement such controls. The SWP3 must clearly describe for each major construction activity identified in Part III.G.1.g: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which contractor is responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization). The SWP3 shall identify the subcontractors engaged in activities that could impact storm water runoff. The SWP3 shall contain signatures from all of the identified subcontractors indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. Ohio EPA recommends that the primary site operator review the SWP3 with the primary contractor prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review has occurred.

Your initial SWP3 failed to meet this requirement. Better planning and coordination should have taken place to ensure compliance with the permit. What actions are you taking to ensure that this problem will not continue into the future?

7. **Part III.G.2.d.**v. of the permit states, Surface Waters of the State Protection. If construction activities disturb areas adjacent to surface waters of the State, structural practices shall be designed and implemented on site to protect all adjacent surface waters of the State from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond) shall be used in a surface water of the State. For all construction activities immediately adjacent to surface waters of the State, it is recommended that a setback of at least 25-feet, as measured from the ordinary high water mark of the surface water, be maintained in its natural state as a permanent buffer. Where impacts within this setback area are unavoidable due to the nature of the construction activity (e.g., stream crossings for roads or utilities), the project shall be designed such that the number of stream crossings and the width of the disturbance within the setback area are minimized.

Your initial SWP3 failed to meet this requirement. Better planning and coordination should have taken place to ensure compliance with the permit. What actions are you taking to ensure that this problem will not continue into the future?

8. **Part I.E.1**. of the permit states, Authorization, Obtaining authorization to discharge. Operators that discharge storm water associated with construction activity must submit an NOI application form in accordance with the requirements of Part II of this permit to obtain authorization to discharge under this general permit. As required under OAC Rule 3745-38-06(E), the director, in response to the NOI submission, shall notify the applicant in writing that he/she has been granted general permit coverage to discharge storm water associated with construction activity under the terms and conditions of this permit or that the applicant must apply for an individual NPDES permit or coverage under an alternate general NPDES permit as described in Part I.C.1.

   Part V. F. Other information.
   When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI, SWP3, NOT or in any other report to the director, he or she shall promptly submit such facts or information.

You are currently only permitted to disturb 86 acres as outlined on your NOI application. Therefore, you do not have coverage for the remainder of the acreage that you currently have disturbed. Submit a letter requesting an increase to include all of your total disturbed acreage immediately.

Within fourteen (14) days of receipt of this letter, please submit to me at this office a written notification as to actions taken or proposed to eliminate violations of the permit. Your response should include the dates, either actual or proposed, for the completion of the actions. If you have any questions, please contact me at (740) 380-5277.

Sincerely,

Jennifer M Witte for

Aaron Wolfe
Storm Water Coordinator
Division of Surface Water

AW/dh

Enclosure