



**Environmental
Protection Agency**

John R. Kasich, Governor

Mary Taylor, Lt. Governor

Scott J. Nally, Director

October 22, 2012

RE: PORTAGE COUNTY
BRIMFIELD TWP.
CONSTRUCTION STORM WATER
DISTRIBUTION WAREHOUSE FACILITY

NOTICE OF VIOLATION

Mike Larson and Ed Gebauer
Insite Real Estate Investment Properties LLC
1400 16th Street, Suite 300
Oak Brook, IL 60523

Jim Hampton
Exxcel Construction Management LLC
328 Civic Center Dr.
Columbus, OH 43215

Ken Meisel
NC Contracting Services LLC
5840 Sterling Dr., Suite 410
Howell, MI 48843

Dear Mr. Larson, Mr. Gebauer, Mr. Hampton, and Mr. Meisel:

On October 17, 2012, Ohio EPA conducted a compliance inspection of storm water best management practices (BMPs) at the above referenced construction site located northwest of Crystal Parkway and Progress Boulevard. I was accompanied on my inspection by Eric Long of the Portage Soil & Water Conservation District (SWCD) and Joe Mosyjowski, project engineer for Mosyjowski & Associates, representing InSite. Mr. Hampton was invited to accompany us, but declined due to other priorities. However, we did recap most of our findings with Mr. Hampton and Mr. Meisel near the conclusion of the inspection.

Our records indicate that all operators have now obtained coverage under the Ohio EPA General Storm Water National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Associated with Construction Activities #3GC05848*AG. The violation cited in our previous Notice of Violation dated August 16, 2012, in regards to NPDES permitting for Exxcel Construction Management LLC and NC Contracting Services LLC have now been corrected. Our records show that Exxcel obtained NPDES permit coverage on September 5, 2012, and NC Contracting obtained coverage on September 6, 2012.

However, my inspection of the Distribution Warehouse Facility site on October 17, 2012, revealed a number of violations related to implementation of the requirements of the NPDES permit. Violations noted were:

- **Failure to install appropriate sediment control practices to address runoff from areas that will remain disturbed for 14 days or longer.** This is a violation of Part III.G.2.d of the NPDES permit and Ohio Revised Code 6111.04 and 6111.07. This violation was noted in two specific locations:
 - **Entrance Drive off Crystal Parkway** – The amended storm water pollution prevention plan (SWP3) submitted to Ohio EPA on September 4, 2012, indicates that a sediment pond is to be provided within the entrance drive. This basin was not present on the date of inspection and no equivalent control was provided as an alternative to the planned basin. As a result, the ditch along Crystal Parkway remains filled with sediment and sediment-laden runoff will discharge to a storm sewer catch basin along Crystal Parkway as well as into Wetland C (see photos).
 - **Progress Boulevard Extension** – The amended SWP3 submitted to Ohio EPA on September 4, 2012, indicates that a sediment pond is to be provided to the south of the new cul-de-sac associated with the extension of Progress Boulevard. This basin was not present on the date of inspection and no equivalent control was provided as an alternative to the planned basin. As a result, sediment is discharging into wetlands that lie south of this area.

Sediment basins are to be installed prior to grading and within seven days of first grubbing the area they are intended to control. As construction progresses and topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns. Appropriate sediment controls must be implemented immediately and the storm water pollution prevention plan (SWP3) revised accordingly if you no longer intend to install the sediment controls depicted in the SWP3 amendment received on September 4, 2012.

- **Failure to install storm drain inlet protection to minimize the discharge of sediment to active storm drain systems which do not drain into a sediment settling pond.** This is a violation of Part III.G.2.d.iv of the NPDES permit and Ohio Revised Code (ORC) 6111.04 and 6111.07. This violation pertains to storm drains located along the extension of Progress Boulevard and the storm drain located along Crystal Parkway. Catch basins in these locations did not drain into a sediment settling pond on the date of inspection. As such, storm drain inlet protection is required. Storm drain inlet protection was either not installed or installed in a non-functional manner (see photos). Install the appropriate form of storm drain inlet protection on these inlets (see enclosure from *Rainwater and Land Development, Ohio's Standards for Stormwater Management, Land Development and Urban Stream Protection*, ODNR, 2006). Also, please review storm drain inlet protection along the entrance drive off Crystal Parkway. At least one inlet requires repair.

- **Failure to maintain and repair silt fence as needed to ensure continued performance of its intended function.** This is a violation of Part III.G.2.h of the NPDES permit and ORC 6111.04 and 6111.07. There are a number of locations where runoff has eroded under silt fence, silt fence needed to be relocated to serve its intended function, or where silt fence was damaged and in need of repair (see photos). Many of these same locations were noted as deficient during the site visit on August 30, 2012, yet not repaired as of the current inspection. Although Ohio EPA did not provide a written notice of our inspection findings for our site visit on August 30, 2012, Mr. Hampton did accompany me on the inspection and was aware of the areas that needed maintenance. Repair and adjust all sections of silt fence as needed to ensure it is functional.

Please note that Part III.G.2.i of the NPDES permit requires permittees to conduct their own compliance inspections once every seven days and within 24 hours of a 0.5-inch or greater rainfall. Repairs and adjustments to silt fence must be made within three days of the inspection that identifies the deficiency. The operators of this construction activity do not appear to have complied with this provision of the NPDES permit. Please submit all inspection reports required by Part III.G.2.i of the NPDES permit conducted by permittees from August 30, 2012, to October 22, 2012.

- **Failure to initiate temporary stabilization of disturbed areas within seven days of last disturbance if the area is to 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. This violation has occurred throughout the development. Although many areas of the site have now been hydroseeded or seeded and matted, this is only occurring now because the project is nearing completion. Temporary stabilization is intended to be a continual process throughout the life of a construction project. Most perimeter slopes and the large soil stockpile at the Crystal Parkway entrance required seeding long ago. The large soil stockpile was never seeded or mulched and is now in the process of being removed from the site. Some areas have been hydroseeded, but the seeding does not extend to the edge of disturbance. Please be sure that all areas disturbed by construction activity are seeded and mulched no later than October 31, 2012.
- **Failure to provide a structural post-construction practice capable of treating the Water Quality Volume (WQv) for the entrance drive off Crystal Parkway.** This is a violation of Part III.G.2.e of the NPDES permit and ORC 6111.04 and 6111.07. The SWP3 originally did not provide any post-construction BMPs for either the entrance drive off Crystal Parkway or the extension of Progress Boulevard. A wet extended detention basin was added for Progress Boulevard, but Ohio EPA review of the design indicates that it will need to be enlarged to meet NPDES requirements. Our review was provided to Mr. Mosyjowski and on October 19, 2012, he provided Ohio EPA with a revised design that meets NPDES permit requirements. As such, please proceed with construction of this basin per the revised design submitted on October 19, 2012.

In regards to the entrance road off Crystal Parkway, you indicated a desire to use the Kristar Flo-Gard Plus catch basin insert as your post-construction water quality practice.

The Distribution Warehouse Facility project is a large construction activity and, as such, is required to provide structural post-construction BMPs capable of detaining the WQv as indicated in Table 2 of Part III.G.2.e of the NPDES permit. Please be aware that the Kristar Flo-Gard Plus catch basin insert does not meet Ohio EPA requirements for post-construction water quality control. Although the NPDES permit does provide a process to obtain approval for BMPs that do not appear in Table 2, alternative BMPs must be tested per the protocol outlined in the Technology Acceptance Reciprocity Partnership's (TARP) Protocol for Stormwater Best Management Practice Demonstrations. The University of Massachusetts Stormwater Technologies Clearinghouse has evaluated a number of alternative BMPs for compliance with TARP testing protocols and summarizes test results (see <http://www.mastep.net/index.cfm>). Per UMass, the Kristar Flo-Gard Plus is rated a "3", meaning there is insufficient credible data for UMass to evaluate the manufacturer's claims. As such, Ohio EPA cannot approve the use of this product as an alternative post-construction BMP.

Several options were discussed with Mr. Mosyjowski. Due to topographical issues, it does not appear that you will be able to provide a single post-construction BMP for both the roadway and the future development on the lot south of the roadway off Crystal Parkway. Although Ohio EPA can defer the post-construction BMP for the lot until the lot is developed, we cannot defer the installation of the post-construction BMP for the entrance road as it is being constructed now. Options within Table 2 that may work for you include sand filters, enhanced dry swales and bioretention cells. Design standards for sand filters and bioretention cells can be found in the *Rainwater and Land Development* manual online at:

https://dnr.state.oh.us/H_Nav2/Water/RainwaterManualOrdering/tabid/18678/Default.aspx.

I provided design standards for dry enhanced swales to Mr. Mosyjowski via e-mail on October 19, 2012. Please review these options for feasibility with site conditions and amend the SWP3 to include one of these practices. If you can demonstrate that none of these practices are feasible due to physical site constraints, Ohio EPA may consider the use of alternative post-construction BMPs or off-site mitigation. However, Ohio EPA believes that one of the standard post-construction BMPs will be feasible for this project.

In addition to these violations of the NPDES permit, Ohio EPA noted the following items of concern:

- Whereas there was runoff ponded within the East and Southwest Basins, no water was ponding within the West Basin. This may be an indication of a leak in the outlet structure or open drain pipe. Observation of the interior of the West Basin outlet structure shows that there is a pipe beneath the pipe to which the skimmer is attached. This lower pipe may be allowing runoff to discharge from the pond. Please review this matter and make adjustments as appropriate to ensure the basin functions as intended. At this time, runoff should only discharge from the West Basin via the skimmer device.

- Review the construction of the East Basin outlet. A significant amount of sediment was observed inside the outlet structure. Please ensure that the outlet is watertight such that runoff can only discharge through the skimmer device.

Please provide me with a letter of response indicating the actions you will take to correct the violations and concerns noted herein. Include any amendments you make to the SWP3 as a result of your response. Your response must be received **no later than November 2, 2012**. Ohio EPA will perform a follow-up inspection the week of November 5, 2012, to determine if compliance has been achieved. Failure to bring the site into compliance with the NPDES permit by this date will result in a referral to our Central Office for escalated enforcement. Please be aware that violations of ORC 6111 are punishable by fines of up to \$10,000 per day of violation.

Finally, please note that Ohio EPA has **not** yet received the hydrogeologic report from Summit Testing and Inspection Co, as promised in your October 15, 2012, letter to me. As such, Ohio EPA is still awaiting submittal of the detention/water quality basin lining proposal for review and concurrence. If a report is not received by November 2, 2012, Ohio EPA will assume that InSite Real Estate Investment Properties has agreed to line all detention ponds and water quality practices as indicated in my letter dated October 4, 2012, in line with the recommendations of our Division of Drinking and Ground Water (DDGW).

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

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/cs

Cc: Joseph Mosyjowski, Mosyjowski & Associates
Eric Long, Portage SWCD
Chip Porter, Portage County Health Department
Lloyd Groves, Portage County Health Department
Trustees, Brimfield Twp.

Ecc: Atiur Rahman, Ohio EPA, DDGW, NEDO
Jeff Rizzo, Ohio EPA, DDGW, NEDO
Annie Van Blaricom, Legislative Liason, Ohio EPA, CO
Mike Settles, Public Interest Center, Ohio EPA, CO
Kristopher Weiss, Public Interest Center, Ohio EPA, CO
Wendy Drake, US EPA, Region 5



Fig 1. Sediment has filled the roadside ditch along Crystal Parkway. Sediment originates from the soil stockpile at the Crystal Parkway entrance.



Storm Drain

Fig 2 & 3. Sediment from the stockpile also enters the storm drainage system on Crystal Parkway. Attempts to protect the catch basin with geotextile have failed.

Photos Taken: October 17, 2012



Fig 4 (LEFT). A swale directs sediment-laden runoff originating from the soil stockpile at Crystal Parkway to Wetland C.



Fig 5 (RIGHT). The soil stockpile at the Crystal Parkway entrance has remained in place for longer than 21 days, yet it has never been temporarily stabilized.



Fig 6 & 7. Storm drain inlet protection has been installed on the inlets along the entrance drive off Crystal Parkway, but some needs repair (photo at right).

Photos Taken: October 17, 2012



Fig 8 & 9. The East Basin is ponding runoff and the embankments have been hydroseeded. However, please note that sediment was observed inside the basin outlet structure.



Fig 10 & 11. The West Basin is not ponding runoff, but the embankments have been hydroseeded. A look inside the outlet structure indicates that the water quality orifice (white pipe) may not be plugged and is allowing runoff to discharge through it rather than the skimmer as intended.

Photos Taken: October 17, 2012



Fig 12 & 13. Sediment deposition at the outlet of the West Basin. The sediment appears to originate from the disturbed area between the basin and the outlet headwall. This same condition existed during my site visit on August 30, 2012. To address this source of sediment, Mr. Hampton was instructed to relocate the silt fence so that came up to the headwall. This did not occur.



Fig 14 (LEFT). Rip-rap placement within the Southwest Basin. Insufficient stone has been used and stone is not extended to the normal waterline elevation. This will allow erosion to occur at each inlet if not corrected.

Fig 15 (RIGHT). The sediment basin for the Progress Blvd extension has not been installed, yet the road has now been paved. Note also that a swale has been created at the storm drain inlet protection to convey runoff away from the sediment control rather than allowing runoff to pond around it.

Photos Taken: October 17, 2012



Fig 16 (LEFT). There are a number of locations where perimeter silt fence requires maintenance and/or replacement. Note that soil is eroding underneath this stretch of silt fence along the north site perimeter. Runoff is directed toward Howe Road.



Fig 17 (RIGHT). There is a gap between these two sections of silt fence along the south site perimeter. Runoff must pond along silt fence in order to be an effective sediment control.



Fig 18 (LEFT). Sediment has built up and knocked down this stretch of silt fence along the west site perimeter.



Fig 19 (RIGHT). This stretch of silt fence along the north perimeter is down and must be restored. Although the slope above the silt fence has now been hydroseeded, silt fence must remain in place and be functional until the vegetation in the contributing drainage area reaches a growth density of 70% or greater. Given the late seeding date, this may not occur until Spring 2013.

Photos Taken: October 17, 2012



Fig 20 (LEFT). Although a Dandy Bag has been placed on top of storm drain inlets along the Progress Blvd extension, note that there is nothing in place to keep sediment from entering the side windows of these outlets.

Fig 21 (RIGHT). The disturbed area east of the warehouse has not yet been stabilized. Please ensure this area is either temporarily or permanently stabilized as required by the NPDES permit.



Fig 22 (LEFT). Hydroseeding does not extend to the edge of disturbance around the west side of the Southwest Basin. All areas disturbed by construction that are either at final grade or a grade that will remain for 21 days or longer must be stabilized.

Fig 23 (RIGHT). Due to topographical differences, it may not be possible to provide a single post-construction BMP that can address both the entrance drive off Crystal Parkway and the lot on which the soil stockpile sits.

