



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

November 21, 2012

RE: CUYAHOGA COUNTY
CITY OF MIDDLEBURG HEIGHTS
CONSTRUCTION STORM WATER
MIDDLEBURG HEIGHTS MEDICAL CENTER
PERMIT NO: 3GC05904

NOTICE OF VIOLATION

Richard Mayer
MetroHealth Systems
2500 MetroHealth Drive, K207
Cleveland, OH 44109

Jason Van Wagnen
Regency Construction Services Inc.
14600 Detroit Rd., Suite 1495
Lakewood, OH 44107

Thomas Agresta Jr
Mr. Excavator
8616 Euclid Chardon Rd
Kirtland, OH 44094

Dear Mr. Mayer, Mr. Van Wagnen and Mr. Agresta:

On October 25, 2012, I performed a compliance inspection at the above referenced construction site located just west of the I-71 SB off ramp to US 42 (Pearl Road). While on site, I met with Jason Van Wagnen, project engineer for Regency Construction Services, and Donnie Pausch, foreman for Mr. Excavator, earthwork contractor. Our records indicate that storm water discharges from this site are authorized under the Ohio EPA General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Associated with Construction Activities #3GC05904*AG.

Please be aware that all parties that meet the definition of "operator" contained in Part VII of the NPDES permit are required to obtain permit coverage. MetroHealth Systems is the only construction site operator that has obtained NPDES permit coverage to date. Regency Construction Services is responsible for overall construction site management and has day-to-day operational control of activities necessary to ensure compliance with the storm water

pollution prevention plan (SWP3). Mr. Excavator is the contractor responsible for installation and maintenance of storm water best management practices (BMPs). As such, these parties meet the definition of operator and must obtain NPDES permit coverage.

Failure to obtain NPDES permit coverage is a violation of Ohio Revised Code 6111.04 and Ohio Administrative Code 3745-39-04. This violation pertains to Regency Construction Services and Mr. Excavator. Violations of ORC 6111 are punishable by fines of up to \$10,000 per day of violation.

To correct this violation, Regency Construction Services and Mr. Excavator must submit a Co-Permittee Notice of Intent (Co-Permittee NOI) to Ohio EPA. This form was to have been submitted prior to commencement of their activities on site. The Co-Permittee NOI and instructions can be downloaded from our website at <http://epa.ohio.gov/dsw/storm/index.aspx> under the Forms and Permits tab. There is no fee to submit a Co-Permittee NOI.

In addition to this violation, my inspection of the site revealed the following deficiencies in storm water BMPs:

- **Although the sediment basin has been constructed, it does not appear that the drainage area intended to be conveyed to the basin is being directed to it.** The SWP3 shows that either a diversion swale or the storm sewer system is to function to collect runoff and convey it to the basin. The storm sewer system has been installed, but most catch basins are above grade. The diversion swale was not installed on the date of inspection. Please review storm water collection systems on the site and amend them as needed to ensure that the intended drainage area is being conveyed to the sediment basin.

Further, we noted that the design specification for the temporary riser pipe outlet does not comply with current NPDES permit requirements. The dewatering structure of sediment basins must be designed to drain the dewatering volume in 48 hours to 7 days. The structure employed on this site is based on an outdated, rule-of-thumb specification for riser pipe design. Further, federal effluent limitation guidelines require the use of dewatering structures that draw runoff from the surface of the pond whenever feasible. Riser pipes do not draw runoff from the surface of the pond. A floating skimmer is preferred.

- **Storm drain inlet protection has not been constructed per specifications contained in the SWP3.** Inlet protection was constructed simply by encircling drains with silt fence. This has resulted in failed storm drain inlet protection (see photos). Please note that geotextile is to be supported by a wooden frame and cross braces constructed of 2"x4"s as well as wire mesh. Please review the specifications contained in the SWP3 and in the enclosure titled Storm Drain Inlet Protection from *Rainwater and Land Development, Ohio's Standards for Stormwater Management, Land Development*

and *Urban Stream Protection* (Ohio Department of Natural Resources, 2006), and install/repair inlet protection to meet these standards.

- **Silt fence has not been installed.** The SWP3 calls for silt fence around the NW corner of the site. It was not installed on the date of inspection. Regency and Mr. Excavator were instructed to install silt fence per the SWP3.
- **Silt fence has not been installed in a functional manner or has not been maintained.** All sediment controls, including silt fence, must be capable of ponding runoff in order to settle sediment. Several stretches of silt fence, particularly along Pearl Road, were not been trenched or backfilled and thus, were not capable of ponding runoff. Please install/repair silt fence so that it is functional. It must remain in place until the upslope contributing drainage area has reached final stabilization, i.e., a vegetative growth density of 70% or greater has been achieved.
- **Stabilization, i.e., seeding and mulching, has not been initiated as required by the NPDES permit.** Temporary stabilization must be initiated within 7 days of last disturbance on any disturbed area of the site if it will not be further disturbed within 21 days of last disturbance. Permanent stabilization must be initiated within 7 days of reaching final grade. No temporary or permanent stabilization was evident on this site. Areas that should have been temporarily or permanently stabilized include: the soil stockpile near the construction trailers, the embankments and slopes near the sediment basin, and perimeter areas of the site. As we are now past the growing season, stabilization can be achieved either through mulching or dormant seeding. Specifications can be found in the SWP3 or the *Rainwater* manual.
- **Outlet protection has not been provided for discharges from the sediment basin.** The plan indicates a geotextile and rip-rap channel will be provided at the discharge pipe, but it was not observed on the date of inspection. Outlet protection is needed to prevent erosion. Further, we noted that the sediment basin will transition to an extended detention pond when construction is complete. It appears that the pond will discharge to wetlands on adjacent property. Please note that Part III.G.2.f of the NPDES permit requires a level spreader be provided to diffuse concentrated flow into natural wetlands. The SWP3 does not provide for a level spreader. Please review this situation with your project engineer and amend the SWP3 as needed to comply with the NPDES permit.
- **There is no berm or other such containment structure to prevent storm water discharges from the mortar mix operations.** Runoff from cement and cement-based products is typically alkaline. Sediment and erosion controls do not address this pollutant of concern. Other measures such as berms to prevent discharge or cover to prevent storm water from contacting materials of concern must be implemented.

- **There is no spill kit on site.** Materials must be kept on site so that spills can be cleaned up should they occur and crews must be trained on proper spill response procedures. Materials of concern include fuel, liquid chemicals, or powdered materials used at the construction site.

Please provide me with a letter of response indicating the actions taken to address the violations and deficiencies noted herein. Include any amendments to the SWP3 with your response, if applicable. Your response should be received no later than December 7, 2012.

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

Sincerely,



Dan Bogoevski
District Engineer
Division of Surface Water

DB/cs

Cc: Gary Starr, Mayor, City of Middleburg Heights
Mike McKay, Engineer, City of Middleburg Heights
Shannon Mullins, Cuyahoga SWCD

Ec: Jason Van Wagnen, Regency Construction Services



Fig 1 & 2. Embankments around the sediment basin and soil stockpiles have not been stabilized.



Fig 3 & 4. Silt fence has not been trenched and backfilled so as to allow runoff to pond behind it.



Fig 5 (LEFT). Storm drain inlet protection along Pearl Rd has not been constructed as required.
Fig 6 (RIGHT). There is no containment around or cover over the mortar mixer.