Ohio EPA
40 years of moving forward
John Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

Re: **Notice of Violation**
Erie County
Erie County & Others (City of Sandusky)
MS4 Storm Water
Facility ID Number 2GQ00027

September 30, 2013

Ms. Crystal Dymond
Storm Water Program Coordinator
Erie SWCD
2900 Columbus Avenue, Room 131
Sandusky, Ohio 44870

Mr. Aaron Klein
City Engineer
City of Sandusky
Engineering Department
222 Meigs Street
Sandusky, Ohio 44870

Dear Ms. Dymond and Mr. Klein:

Currently, the City of Sandusky operates as a co-permittee with Erie County & Others under Ohio's General Storm Water National Pollutant Discharge Elimination System (NPDES) permit for Small Municipal Separate Storm Sewers Systems (MS4s), also known as the Small MS4 Permit. Ohio EPA has completed an audit of the City of Sandusky's Storm Water Management Program (SWMP). The SWMP is a requirement of Ohio Administrative Code (OAC) 3745-39 and the Small MS4 Permit. The audit focused on the City's implementation of minimum control measures (MCMs) #4 (Construction Site Storm Water Runoff Control) and #5 (Post Construction Storm Water Management). The audit was prompted by ongoing compliance issues observed on construction sites within the City.

The audit consisted of: a May 20, 2013, interview with Engineering Department staff, inspections of several construction sites within the City, and reviews of annual reports and related City ordinances. Enclosed are the Municipal Storm Water Program Evaluation Worksheets completed for the City of Sandusky. Some comments in these worksheets are specific to the City. However, since one SWMP and one annual report have been submitted for the Co-Permittees, some comments concerning these two documents are applicable to each Co-Permittee. I recommend that the Co-Permittees all review the enclosed report to insure that their jurisdiction addresses in the SWMP and in their daily implementation the outlined issues. We encourage the Co-Permittees to work together to remedy any SWMP violations and deficiencies.

Please review the enclosed documents in detail to determine specific elements where your SWMP needs improvement. In addition, you will find comments suggesting ways to improve your MS4 program. Key points (both violations and suggestions) in the Municipal Storm Water Program Evaluation Worksheet have been highlighted in yellow. The following is a summary of the audit findings:

Violations:

- **Failure to include information in the annual reports is a violation of Part IV. C. of the Small MS4 NPDES permit.** For example, under "Construction: Site Inspection", the measurable goal should at least note inspection frequencies. This should be an initial inspection and at least once per month thereafter, unless the SWMP includes a site prioritization procedure. If there is such a procedure, it should be listed instead. Under Site Inspections Performed: # Performed and Avg. Frequency", the 2012 Annual Report stated "as needed". This response must show actual numbers. More detail is included in the enclosed worksheet. Please make these changes when submitting the 2013 annual report.
- **Failure to fully develop, implement, and enforce a program addressing construction site runoff and post construction storm water management.** While the City of Sandusky has some elements in place, there are gaps:
    - **Ordinances/Regulatory Mechanisms:** The City is required to have an ordinance or other regulatory mechanism in place to require sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management for new or redevelopment projects disturbing one acre or more. The City needs to make sure their ordinance: clearly states who is required to submit an SWP3; ensures review of all plans where one acre or more of earth disturbance will occur in the larger common plan of development or sale, bases the submittal of a SWP3 on the amount of disturbed area not parcel size; requires construction site operators to control non sediment pollutants; and meets the technical requirements of the Construction General Permit. *Failure to have this is a violation of Parts III. B. 4.a. and 5.c. of the permit.* If this is incorrect, please provide a copy of the regulations that cover the above-mentioned deficiencies and cite the relevant section number
    - **Plan Review:** The current permit requires that all plans be reviewed prior to construction. While all plans are reviewed, based on our audit it does not appear that plan submittal is triggered for all required situations. The plan review process for sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management did not appear to capture all required information or ensure that sites met the technical requirements of the Ohio EPA's NPDES Construction General Permit. *This is a violation of Parts III. B.4.c. and 5.f. of the permit.* An acceptable program consists of plan review to assure that sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management controls are being provided, are designed per the required standards, and that there are long term operation and maintenance plans and agreements for the post construction storm water controls. The City must revise the plan review/approval process and providing additional training on design and plan review to staff. When plan development for municipal projects is contracted out, there must be procedures in place to ensure that the City of Sandusky's regulations and specifications are included in those SWP3s and Comprehensive Storm Water Management Plans.
    - **Inspections:** The SWMP must include detailed information on site inspection procedures. The frequency of site inspections during construction and method of non-compliance notification was not sufficient to ensure permit compliance at construction sites. *These are violations of Parts III. B.4.a. and c. of the permit.* The City must have a system to ensure that: all construction projects are having an initial inspection and monthly inspections thereafter, inspections are documented, and site compliance is tracked. It is expected that written documentation would be provided to the site operator when violations are found.

- **Ensuring long-term maintenance of post-construction BMPs.** The City does not appear to have procedures in place to ensure the long-term operation and maintenance (O&M) of all post-construction storm water controls, such as site inspections to verify controls are installed as per requirements for private as well as public projects; mapping BMP locations; and inspecting/verifying that O&M is being done as required. *These are violation of Part III.B.5.d. and f. of the permit..*

Deficiencies:

- **Enforcement:** The SWMP also needs to include an official enforcement escalation plan or procedure for both the Construction Site Storm Water Control and the Post Construction Storm Water Management MCMs. Such a policy should clearly describe the action to be taken for common violations, define the roles of various departments and describe which staff are authorized to enforce the applicable ordinances. The SWMP should describe how enforcement actions are tracked.

Please review my comments and provide me with a response letter indicating the actions you have taken or propose to address the above issues. Your response must include the dates, either actual or proposed, for the completion of the actions. The City of Sandusky's **written response should be received no later than 60 days after the date on this letter.** If you have any questions, please contact me at (419) 373-3009.

Sincerely,

Lynette Hablitzel, P.E.
Storm Water Program
Division of Surface Water

/jlm

Enclosure

ec:Jason Fyffe, CO-DSW
Anthony Robinson, CO-DSW
Crystal Dymond, Erie SWCD
Aaron Klein, City Engineer, City of Sandusky
Jane Cullen, P.E., Project Engineer, City of Sandusky
Ed Dayringer, Engineering Technician, City of Sandusky
Tracking

MS4 Construction & Post Construction MCM Worksheet

Date of Evaluation 5/20/2013
Evaluator Name, Title Lynette Hablitzel, Ohio EPA – NWDO
MS4 Permittee & Facility Permit No. Erie County & Others 2GQ00027 4/24/2003 (Original) 6/17/2009 (Renewed)

Staff Interviewed		
Name	**Department/Agency**	**Phone Number/Email**
Jane Cullen, P.E.	Project Engineer City of Sandusky Engineering Department 222 Meigs Street Sandusky, OH 44870	419- 627-5932 Jane.Cullen@ci.sandusky.oh.us
Ed Dayringer	Engineering Technician City of Sandusky Engineering Department 222 Meigs Street Sandusky, OH 44870	419-627-5831 edayringer@ci.sandusky.oh.us

Construction Projects	
Interview Questions	**Response**
Construction Ordinance (or similar mechanism) in place? Section of Code/Mechanism:	City of Sandusky Code Nos. 937 (SWP3 for sediment and erosion control), 935.1 (Comprehensive Storm Water Management Plan), and 941 (Illicit Discharges). See www.ci.sandusky.oh.us
Date passed:	4/28/2008
Does ordinance address all earth disturbing activities? Address all projects affecting 1 acre or more? Address non sediment pollutants? Equivalent with technical requirements in CGP (OHC000003)?	No. See Notes below. No. See Notes below. No. See Notes below. No. See Notes below.
Are all plans reviewed?	While it appears that the relevant plans are being reviewed, it is not clear that the City's ordinance supports the submittal for a SWP3 for all required projects. See Notes below.
Are all construction sites initially inspected? Follow-up inspections conducted monthly?	The City is currently using an inspection form and has a log book. There was a recent gap in

Construction Projects	
Interview Questions	**Response**
If not, are there written inspection prioritization procedures?	performing inspections, so they have not been conducting monthly inspections.
MS4-Owned Projects designed in-house or contracted?	Both. See Notes below.
Designers/reviewers trained in storm water BMP implementation?	There has been some training but based on my review of the Dollar General SWP3, additional training is needed. See Notes below.
Checklist used during the design and/or review of public/private construction projects?	Have recently begun to use Ohio EPA checklist.
Are projects greater than one acre covered a general construction permit (has an NOI been submitted)?	Yes.
If contracted planners and engineers are used for the design of MS4-owned projects, does the contract language specify that storm water BMPs be incorporated into the design?	No storm water specific contract language.
In-house inspection staff inspect projects? If so, which department?	Yes. City Engineer's Office (Ed Dayringer).
Project inspectors trained? Frequency:	Yes.
If contracted inspectors are utilized, are minimum inspection, maintenance and reporting requirements specified in the contract?	Not used.

Applicable Documents	Reviewed	Obtained
MS4-owned project storm water design standards and/or checklist	None.	None.
Contract language for projects that are not developed or inspected in-house	None.	None

Post Construction Storm Water Management	
Interview Questions	**Response**
Post Construction Ordinance (or similar mechanism) in place? Section of Code/Mechanism:	Sandusky Ordinances Nos. 937 (SWP3 for sediment and erosion control), 935.1 (Comprehensive Storm Water Management Plan), and 941 (Illicit discharges). See www.ci.sandusky.oh.us
Date passed:	4/28/2008
Does ordinance address all projects affecting 1 acre or more?	Yes.
Equivalent with technical requirements in CGP (OHC000003)?	No. It does refer to the Rainwater and Land Development Manual as the standard. It also defines the Water Quality Volume as equivalent to the maximized capture volume as defined in the American Society of Civil Engineers (ASCE) Manual and Report on Engineering Practice No. 87 and Water Environment

Post Construction Storm Water Management	
Interview Questions	**Response**
	Federation Manual of Practice No. 23 titled Urban Runoff Quality Management. It does not include or refer to any of the Construction General Permit language.
Are all plans reviewed?	All submitted plans are reported to be reviewed, however I did not see any post construction information with the Dollar General plans. It is unclear if plan submittal is triggered for all required situations. See questions in the Notes below.
Designers/reviewers trained in storm water BMP implementation?	There has been some training but based on my review of the Dollar General SWP3, additional training is needed.
Checklist used during the design and/or review of public/private post-construction BMPs? Does review include insuring that long term O&M plans are developed and agreements are in place?	No. The staff does refer to Rainwater and Land Development Manual. Does not appear to.
If contracted planners and engineers are used for the design of MS4-owned projects, does the contract language specify that post-construction storm water BMPs be incorporated into the design?	No storm water specific contract language.
In-house inspection staff inspect post-construction BMPs? If so, which department? Are all Post Construction BMPs inspected to insure BMPs are installed per requirements?	City staff inspect public post construction BMPs to make sure they are built as approved. There is no effort to ensure private project as built as approved.
Post-construction inspectors trained? Frequency:	Yes.
If contracted inspectors are utilized, are minimum inspection, maintenance and reporting requirements specified in the contract?	N/A

Applicable Documents	Reviewed	Obtained
Storm water design standards and/or checklist	Yes.	Rainwater and Land Development Manual for post construction (available online)
Contract language for projects	No specific storm water language.	No specific storm water language.

Notes
Regulations: Sandusky City Code 937 appears to address the requirement for sediment and erosion controls. I have the following comments/questions: • It was unclear in the ordinance who is required to be the applicant and submit the SWP3. • Section 937.05 "(a) This Chapter requires that a Storm Water Pollution Prevention Plan be developed and implemented for all parcels of one (1) acre or more." This is incorrect. The MS4 is required to review a SWP3 depending on the amount of earth disturbance (i.e. construction activities) in the larger common plan of development or sale, not on parcel size. • 937.06 (e) "Approvals issued in accordance with this Chapter shall remain valid for one (1) year from the date of approval." It seems that the approved plan is only valid for one year. Unless the City's intent is to require new SWP3 submittals if a project is not completed within a year, this may need to be reworded. • 937.08 (c) "The SWP3 shall incorporate measures as recommended by the most current edition of Rainwater and Land Development as published by the Ohio Department of Natural Resources…" While the Rainwater Manual is used as design guidance by Ohio EPA and referenced in the Construction General Permit, the minimum technical requirements are listed in Ohio EPA's Construction General Permit. Where the two documents differ, the standards in the permit must supercede the manual. Where the permit is silent, the Rainwater Manual provides design guidance. I suggest at least including a reference to the current Construction General Permit in addition to referencing the Rainwater Manual. • 937.10 (c) " The Abbreviated SWP3 shall include information following the requirements as listed in the procedures maintained by the Director of Engineering Services." What is the difference between an SWP3 and an abbreviated SWP3? /What is included in an abbreviated SWP3? • 937.12 "PERMIT. No project subject to this Chapter shall commence without a SWP3 approved by the Director of Engineering Services." Section 937.13 ENFORCEMENT also talks in terms of violations of the approved SWP3. Neither code limits activities or mentions enforcement for non-compliance with an abbreviated SWP3. • I did not see anything that required non -sediment controls, the timing of various controls, and routine self-inspections as per the Construction General Permit. Sandusky City Code 935 appears to address the requirement for post construction storm water management. I have the following comments/questions: • 935.02 (oo) "WATER QUALITY VOLUME. The volume of runoff from a contributing watershed that must be captured and treated, equivalent to the maximized capture volume as defined in the American Society of Civil Engineers (ASCE) Manual and Report on Engineering Practice No. 87 and Water Environment Federation Manual of Practice No. 23 titled Urban Runoff Quality Management." This differs from the definition of WQv in the Construction General Permit. • 935.06 (c) "Final Comprehensive Storm Water Management Plan: The applicant shall submit two (2) sets of a Final Comprehensive Storm Water Management Plan (Final Plan) and the applicable fees to the Director of Engineering Services in conjunction with the submittal of the final plat, improvement plans, or application for a building or zoning permit for the site." When (and in what section of municipal code) is an improvement plan required? 1179.05 (f) allows improvements to occur prior to recording a final plat. Would municipal code 935.06 (e) prevent earth disturbing activities from starting without plan approval if a request was submitted under 1179.05(f)?

Notes

- 935.08 references the Rainwater and Land Development Manual as the design standard. While the Rainwater Manual is used as design guidance by Ohio EPA and referenced in the Construction General Permit, the minimum technical requirements are listed in Ohio EPA's Construction General Permit. Where the two documents differ, the standards in the permit supercede the manual.
- 935.10 requires an agreement that says who is responsible for O&M and allows for city inspection. Where in the code does it state that the party is responsible for keeping it operating as intended?
- 935.10(a) (1) "The Director of Engineering Services and Law Director shall approve an inspection and maintenance agreement binding on all subsequent owners of land served by the planned storm water management practices before the City accepts the final plat of the proposed project." Is a final plat always required for an earth disturbing activity? What happens if a final plat is not required for a project?
- 935.10 (4) "An as-built survey must be completed by qualified registered engineer or surveyor and submitted to the City showing the location, detention volume (include depth and capacity) of all storm water practices." There needs to be a time limit for submittal.

Plan Review – City engineer position has recently been empty. Aaron Klein, the new City Engineer, is to start June 24, 2013. Private projects go through Megan Stookey (Building), then plans go to Engineering for review of sediment and erosion controls. Engineering has started (since last year) to use Ohio EPA checklist for plan review. (Checklist was used for K&K Interiors plan review but not for Dollar General). If SWP3 is approved, then the City issues a storm water permit. They do not contract out plan review. Engineering does design for streets projects but those may also be contracted out. They contract out some City Services projects. They may contract out LPA projects for next year. There is no specific contract language for storm water.

- **Dollar General**– I looked at plans reviewed by the City for Dollar General. The SWP3 for this project appeared incomplete and did not meet the technical requirements of Ohio EPA's Construction General Permit. There was no construction sequence. No demonstration of how the post-construction storm water management requirements would be met. No seeding specifications (they had timing but no rates). No detail drawings of controls.

Inspections- Ed Dayringer is the sole inspector. He took CESSWI and has to retake a portion of the exam. The City does not contract out inspections. He does inspections for public projects as well. They do write up each inspection, but do not necessarily send a letter or report if there is a violation. Mostly they contact the entity over the phone or through e-mail. I looked at his inspection binder where he documents inspection results. It also contained some photos. They have not yet done any enforcement. It is unclear as to what criteria the City would use to escalate enforcement.

I had inspected Dollar General on April 3, 2013. While the building was complete, there were no sediment or erosion controls and erosion was evident. My April 24, 2013, inspection showed the site was unchanged. Mr. Dayringer reported on May 20, 2013, that he went to Dollar General that morning. The site was seeded and mulched. The mulch had blown. The facility did not use erosion control matting in the basin as was stated in the plans.

Post Construction Storm Water Management – The City inspects to see if post construction storm water management controls are built as approved on public projects, but they do not do the same for private projects. MS4 mapping – The City uses a paper atlas. It does not include the location of post construction storm water controls. No known HSTS. No efforts have been made to ensure the long term maintenance of controls.

Notes
Overall, Program Implementation: The permit requires that an ordinance or other regulatory mechanism be in place to require sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management for new or redevelopment projects disturbing one acre or more in the larger common plan of development or sale. The City needs to make sure their ordinance: clearly states who is required to submit an SWP3; ensures review of all plans where 1 acre or more of earth disturbance will occur in the larger common plan of development or sale, bases the submittal of a SWP3 on the amount of disturbed area not parcel size; requires construction site operators to control non sediment pollutants; and meets the technical requirements of the Construction General Permit. *Failure to have this is a violation of Parts III. B. 4.a. and 5.c. of the permit.* If this is incorrect, please provide a copy of the regulations that cover the above-mentioned deficiencies and cite the relevant section number. The plan review process for sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management did not appear to capture all required information or ensure that sites met the technical requirements of the Construction General Permit. *This is a violation of Parts III. B.4.c. and 5.f. of the permit.* The City had recently begun using a checklist for plan review. An acceptable program consists of plan review to assure that sediment and erosion controls, non-sediment pollutant controls, and post construction storm water management controls are being provided, are designed per the required standards, and that there are long term operation and maintenance plans and agreements for the post construction storm water controls. The City must revise the plan review/approval process and providing additional training on design and plan review to staff. When plan development for municipal projects is contracted out, there must be procedures in place to ensure that the City of Sandusky's regulations and specifications are included in those SWP3s and Comprehensive Storm Water Management Plans. Your SWMP must describe the plan review process. This would include include information on: plan reviewer training (frequency and type), plan review criteria - including any checklist used or technical guidance provided to developers/contractors, and if NOI submittal is verified during review. Site Inspections – The frequency of site inspections during construction and method of non-compliance notification was not sufficient to ensure permit compliance at construction sites. *These are violations of Parts III. B.4.a. and c. of the permit.* The City must have a system to ensure that: all construction projects are having an initial inspection and monthly inspections thereafter, inspections are documented, and site compliance is tracked. It is expected that written documentation is provided to the site operator when violations are found. The SWMP must include detailed information on site inspection procedures. Relevant information includes: how many sites are inspected, how often they are inspected or describe during what stages of construction they are inspected, the priority system for inspections, how construction sites and compliance inspections are tracked, how projects are prioritized to determine inspection frequency, any inspection checklist /form, and frequency and type of inspector training. The City does not appear to have procedures in place to ensure the long-term operation and maintenance (O&M) of all post-construction storm water controls, such as site inspections to verify controls are installed as per requirements for private as well as public projects; mapping BMP locations; and inspecting/verifying that O&M is being done as required. *These are violation of Part III.B.5.d. and f. of the permit.* An acceptable post construction program consists of : 1. Plan review. 2. Mapping the location of post construction BMPs and tracking the responsible party for

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implementing the long term O&M plan 3. Performing an inspection or otherwise verifying that the post construction BMPs are installed as per approved plan 4. Periodically inspecting or otherwise verifying that the post construction BMP is being managed in accordance with the long term O&M 5. Taking enforcement action against the responsible part if they fail to maintain the BMP as required The Center for Watershed Protection has a manual on long-term maintenance programs with checklists that you may want to use for your program. Chagrin River Watershed Partners, Inc. (CRWP) has developed a model agreement that a municipality may use to ensure the long-term operation and maintenance of post-construction best management practices (BMPs). This language may need to be modified to reflect local requirements and should be reviewed by the municipality's legal council. A copy may be found at: http://crwp.org/pdf_files/model_im_agree_sw_bmp_10_29_2008.pdf. The SWMP also needs to include an official enforcement escalation plan or procedure for both the Construction Site Storm Water Control and the Post Construction Storm Water Management MCMs. Such a policy should clearly describe the action to be taken for common violations, define the roles of various departments and describe which staff are authorized to enforce the applicable ordinances. The SWMP should describe how enforcement actions are tracked. **Annual Report** In all sections of the Annual Report, instead of listing Erie County Engineer and all MS4s for "Responsible Party", please list the person(s) and department or agency responsible for each MS4. For "Construction Complaints, Summary of Results or Activities" - It would appear by the response that none of the complaints were valid. If that is not so, please note the results of the inspection and what follow-up actions the MS4 took. Under "Site Inspection", the measurable goal should at least note inspection frequency. This should be initially and at least once per month, unless the SWMP includes a site prioritization procedure. If there is such a procedure, it should be listed instead. Under Site Inspections Performed: # Performed and Avg. Frequency", the 2012 Annual Report stated "as needed". This response must be actual numbers. The "Enforcement Procedures" row was mostly left blank. The permittees need to include a measureable goal, if it was met, the number of violation letters sent and of enforcement actions taken, as well as a list of results and action taken. This could be a list of sites with the corresponding number of violations letters, stop work orders, fines, etc. Under "Post Construction, Site Plan Review Procedures, # of Plans Reviewed" , please include a number instead of just a reference to additional documentation. Under "Site Inspection Procedures", "Responsible Party" is the person(s) and department or agency responsible for ensuring the installation of post construction BMPs. Under Long-Term O&M Plans/Agreements, need "# of Sites Requiring Plans/Agreements" and "# of Plans Developed/Agreements in Place". Under "Summary of Results or Activities", list the sites for which a long term maintenance plan was developed and list the sites where long-term maintenance inspections were conducted by the MS4 or where a report was submitted.

Notes
The "Enforcement Procedures" row was mostly left blank. The permittees need to include a measureable goal, if it was met, the number of violation letters sent and of enforcement actions taken, as well as a list of results and action taken. This could be a list of sites with the corresponding number of violations letters, stop work orders, fines, etc. *Failure to include information in the annual reports is a violation of Part IV. C. of the Small MS4 NPDES Permit.* Please make these changes when submitting the 2013 annual report.