



Environmental  
Protection Agency

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

December 9, 2011

Mr. Brian Filburn  
Construction Managers of Ohio  
521 Byers Road, Suite 201  
Miamisburg, OH 45342

**RE: Notice of Violation, Byers Building III, NPDES Permit # 1GC04084**

Dear Mr. Filburn:

On Monday, November 28, 2011, I inspected the Byers Building site in Miamisburg to determine compliance with the site's National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit. Based on this inspection, and a review of the site's stormwater pollution prevention plan (SWP3), submitted per my request the week before the inspection, the project is in violation of the following portions of its permit:

**1. Part III.G.A Stormwater Pollution Prevention Plans**

The SWP3 that was submitted per my request is essentially useless. Comments on the plan were provided to you via electronic mail on November 28, 2011, and will not be repeated here. Current law requires NPDES-regulated construction sites to have viable SWP3s in place before work gets underway, and to amend the plans as necessary throughout the life of the project. See page 10 of the general construction permit for details about SWP3 preparation and submittal, and page 12 of the permit for specific SWP3 requirements.

Please provide to this office within 7 days of receipt of this letter a copy of the SWP3 for the Byers Building III project. This plan is expected to contain customized information concerning erosion and sediment controls that are being used at the site. A plan comprised of generic, boilerplate text describing erosion/sediment controls that could be used anywhere is not adequate.

**2. Part III.G.2.b.i Stabilization**

Please explain how disturbed ground to the west of the new building will be stabilized, either temporarily (over the winter) or permanently (for areas at final grade). Note that seeding bare ground on its own is not considered a form of stabilization because bare seed does not prevent erosion. Covering bare ground with straw or woody debris is the best way to temporarily stabilize bare ground. (Placing straw over frozen ground is discouraged unless a tackifier is used to keep the straw from blowing away.) Seeding

to establish permanent vegetation should be accompanied by placing straw or other cover material over it to ensure erosion is minimized before the grass gets established.

**3. Part III.G.2.e Post-Construction Stormwater Management**

Information contained in the SWP3 submitted in late November suggests a fundamental misunderstanding of the concept behind post-construction stormwater management. The basic idea is that new developments install various structural or non-structural features on their properties to "treat" the amount of runoff produced by a ¾ inch rain. Please include in your written request to this letter an explanation as to how the site will address post-construction stormwater management requirements. See page 20 of the site's construction permit for more information about this requirement.

In addition to the above requests, please provide the following in your response:

- Erosion and sediment control inspection records for phase III of the project, since its beginning;
- An explanation regarding the location, installation, and removal of silt fence. Who is responsible for which activity?
- Why does so little runoff from the site find its way to Pond 2?

Because of Pond 3's poor (and in the past non-existent) outlet control, off-site sediment releases have been documented in a nearby pond located downhill from the Byers Building project. Under pressure, work was done to the outlet to maximize settling of eroded sediments, but it remains unclear if these efforts are satisfactory. Because a viable SWP3 does not currently exist for the site, and because past discussions with you regarding what's necessary to comply with NPDES construction site stormwater permitting requirements have been ignored, an enforcement case is being considered for this project.

If you have questions about this letter, I may be reached at 937.285.6442, or via email at [chris.cotton@epa.state.oh.us](mailto:chris.cotton@epa.state.oh.us).

Sincerely,



Chris Cotton  
Ohio EPA, Division of Surface Water

CC/ff

ec: Larry Reeder, Enforcement Coordinator, OEPA/DSW/CO  
Beth Moore, Public Works Director, City of Miamisburg