



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
GAYLORD FIELD OFFICE



DAN WYANT
DIRECTOR

October 21, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. J.R. Anderson
Village at Grand Traverse LLC
3805 Edwards Road, Suite 700
Cincinnati, Ohio 45209

VN No. VN-005944

Dear Mr. Anderson:

SUBJECT: Violation Notice, Natural Resources and Environmental Protection Act,
Grand Traverse Town Center Construction Project, Acme Township, Michigan

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), has inspected the Grand Traverse Town Center Construction Project (hereafter “site” or “construction site”), located at M-72 and Lautner Road, Acme, Michigan 49610 to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 31), as well as compliance with Part 91, Soil Erosion and Sedimentation Control (SESC) of the NREPA, 1994 PA 451, as amended, MCL 324.9101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 91), and Rule 323.2190, Permit-By-Rule of the 1979 Administrative Code; and your National Pollutant Discharge Elimination System (NPDES) Notice of Coverage (NOC) No. MIR112950, which was issued on June 26, 2014.

The construction site was initially inspected by WRD staff on September 23, 2014, after heavy rains. Follow up inspections performed by WRD staff occurred on October 2, 2014, October 3, 2014, and October 15, 2014. The inspections were intended to verify if the SESC measures were functioning sufficiently, and to determine if a storm water discharge containing suspended sediment or other pollutants was occurring to any waters of the state, in violation of Part 31, Part 91, and your NOC.

On each of the above noted inspection dates, WRD staff observed the unlawful discharge of soils from the construction site to either wetlands and/or Acme Creek. The purpose of this letter is to identify and provide notice of violations of the above-cited Acts, Permit, and NOC. As a result of these discharges, the receiving water (including wetlands) contained suspended sediment and/or sediment deposits significant enough to result in unnatural quantities of physical properties in those waters, including discernable increases in turbidity and suspended solids, changes in color, and/or deposition, in violation of Part 31 and its associated Administrative Rules.

It is integrally recognized and understood that a discharge of storm water to Acme Creek that contains eroded/suspended soil particles results in a discharge of the same to Grand Traverse Bay, particularly with respect to the minute silt and clay particles that will not readily settle and deposit in Acme Creek. However, even though the apparent, principle concern for the site resides with the mobilized and suspended silt and clay, and their impacts and fate in the receiving waters, migration and deposition of heavier silts and sand particles are also a concern.

Staff also observed that soil erosion control measures were not effective, contributing to the aforementioned discharges to the surface waters of the state. The control measures were ineffective because they were not fully installed and/or were not of a type sufficient to address the clay content of the site's soils, especially given the significant extent of the site that consisted of bare soils. The extent of the site that consisted of exposed soils was a principle contributor to the unlawful discharge. The failure to ensure adequate soil erosion control measures is a violation of Part 91 Section 9116, Section 1702(2) of the Part 91 Administrative Rules, and Section (2)(c) the Permit-by-Rule of Part 31.

Observations of the specific inspection dates follow:

1. The unlawful discharge of water containing suspended sediment (sediment-laden) from the construction site, in violation of Part 31, Part 91, and your NOC, was observed during the September 23, 2014, and October 2, 2014, inspections. These violations were cited in the compliance communication letter that was sent out to you by certified mail, and dated October 10, 2014. The direction and schedules provided in that letter are still in effect. Any direction and schedules provided herein are in addition to those identified in that October 10, 2014, letter.
2. On October 3, 2014 WRD staff inspected the construction site during or immediately following rain that had occurred that day and the previous night, to both assess the effectiveness of the additional SESC control measures the contractor (Team Elmer's) had implemented in previous days, and to determine if storm water containing suspended soils was continuing to unlawfully discharge to wetlands and/or other waters of the state. During the inspection, WRD staff observed sediment-laden water entering both regulated wetlands and Acme Creek from the area on site that is adjacent to "basin one" and its serpentine discharge channel. That evening, WRD staff observed and followed a discharge, originating from the site, of a distinct and very light tan colored water that can be additionally described as opaque, "cloudy" or "milky" (resulting from clay soil particles suspended and dispersed uniformly throughout the storm water). The "milky" water from this area of the construction site was followed into and through a wetland spur to a location at that wetland's confluence with Acme Creek. At the confluence that milky water could be visibly discerned entering the creek, in violation of Part 31, Part 91, and the NOC. Water being pumped through a filter bag was observed as a contributor to this unlawful discharge (WRD staff was able to track this milky water from that specific source to the aforementioned confluence or point of discharge into Acme Creek). Sediment from the site mobilized by prior rain events was also observed to have been deposited in regulated wetlands in violation of Part 303, Wetland Protection, of PA 451, as amended (NREPA). The October 10, 2014 letter, noted-above, contains direction regarding expected restoration activities with respect to Part 303.

The October 3, 2014 inspection also found other areas where opaque water containing suspended soils had reached Acme Creek or surface water features tributary to Acme Creek.

3. During the inspection on October 15, 2014, WRD staff found several violations at the site. Sediment-laden water was observed being pumped across the access drive off of Lautner Road. This same water was witnessed running along the ditch to the south of Lautner Road and leaving the site, constituting a Part 91 violation and a violation of your NOC. When informed of this, Team Elmer's did shut the pump off. Another Part 91 and NOC violation was noted in the northwest corner of the site where silt fence was overtopped with

sediment-laden water that was seen running onto the adjacent property to the west. Water was also observed being pumped through a Storm Klear system on the southwest part of the property. This water was viewed running downhill through a vegetative buffer and entering the Acme Creek wetland corridor, still opaque and diffused throughout with clay soil particles, in violation of Part 31, Part 91, and your NOC.

The Village at Grand Traverse LLC is expected to immediately take all necessary and otherwise lawful actions needed to achieve and maintain compliance with Part 91, Part 31 along with the terms and conditions of the NOC. Please note however, that the Village at Grand Traverse LLC or its authorized agents are expected to obtain any state, local, or federal regulatory approvals and permits applicable to any actions taken to bring the site into compliance, from the appropriate agencies.

Given the nature of the clay soils, the site topography, and large area of disturbed soil, and the present and forthcoming time of year, specific measures have considerably more merit. Measures that provide permanent or temporary cover of the exposed soils, and that shield those soils from rainfall, runoff, or channelized flow, are considered vital and most paramount to bringing the site into compliance. The site has been unable to effectively eliminate the violations of Part 91, Part 31, and the NOC, therefore Village at Grand Traverse, LLC should seek the assistance of a qualified consultant or other resource that specializes in soil erosion and sedimentation control to explore, evaluate, and implement available technologies needed to improve soil cohesion and/or provide protective soil cover, in conjunction with runoff control, to return the site to compliance and to ensure compliance is maintained throughout the duration of the project through final stabilization.

In addition, please submit a written response to this Violation Notice. Please send this response to Mr. Justin Bragg in the Gaylord Field Office, with a copy of the response to Mr. Brian Jankowski in the Cadillac District Office at 120 W. Chapin Street, Cadillac, MI 49601-2158, by October 29, 2014. At a minimum, the response shall include:

- A corrective action plan, with schedules, that identifies steps taken, and/or to be taken to immediately cease the aforementioned violations and to prevent further discharge of soil-laden water from the site to either regulated wetlands or any other waters of the state. This should include a detailed description and compilation of activities undertaken to date, and those planned for future implementation, to prevent another discharge of any type of water carrying soil from leaving the site and entering adjacent properties, wetlands or surface waters. Please provide photos, if appropriate, to demonstrate the placement of or effectiveness of SESC measures that have been implemented subsequent to this violation notice.
- A revised SESC plan highlighting the existing, new, and/or proposed SESC measures intended to address all areas of earth disturbance. Including a revised timing and sequencing plan that includes a detailed projected schedule for the remaining earth change activities through the anticipated final stabilization efforts.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

Please be advised that compliance with the terms and conditions of this Violation Notice does not constitute a release or waiver of liability for past or continuing violations of Parts 31, 91, or 303, the NOC, or other statutes, if applicable. Please be further advised that the DEQ reserves the right to require additional activities, including restoration activities in Acme Creek and its floodplains, wetlands or Grand Traverse Bay, along with other possible corrective actions as identified by WRD. The DEQ also reserves the right to take additional or escalated enforcement action and levy fines and penalties with regard to past, continuing or future violations.

We anticipate your cooperation in resolving this matter. Should you require further information, or if you would like to arrange a meeting to discuss these matters, please contact me directly at 989-705-3438; braggj@michigan.gov; or DEQ, WRD, Gaylord Field Office, 2100 W. M-32, Gaylord, Michigan 49735.

Sincerely,



Justin Bragg,
Environmental Quality Analyst
Gaylord Field Office
Water Resources Division

cc: Mr. Brian Jankowski, DEQ
Mr. Joe Haas, DEQ
Ms. Robyn Schmidt, DEQ
Mr. Bill Larsen, DEQ
Mr. Barry Selden, DEQ
Mr. Pete Bruski, Grand Traverse County CEA
Mr. Steve Schooler, Director of Construction
Mr. Terry Boyd, Gourdie Fraser
Mr. T. Eric Ritchie, Team Elmer's
Mr. Steve Folkersma, Team Elmer's
Mr. Jay B. Zollinger, Acme Township Supervisor