



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

JULY 5, 2017

Amber Miller, et. al.
15529 W. Toussant N. Rd.
Graytown, OH 43432

**Re: Rocky Ridge Development, LLC
Verified Complaint
Document Subtype
Beneficial Use
Lucas County
MSWL021632**

Certified Mail

Ohio EPA JUL 5 '17
Entered Directors Journal

Subject: Complaint Letter Dated January 23, 2017

Dear Sirs and Madams:

By sworn affidavit on January 23, 2017, you filed a verified complaint ("VC"), with the Ohio Environmental Protection Agency ("Ohio EPA") alleging that Rocky Ridge Development, LLC violated conditions of the LAMP permit BENUO20261, the NPDES permit, Ohio water law and the Federal Clean Water Act. You also alleged in that letter violations of Ohio drainage law and local zoning regulations, including Benton Township zoning regulations on the Rocky Ridge Development property located in Benton Township ("the Property"). In a letter dated February 10, 2017, Ohio EPA DMWM determined that, except as to the alleged violations of local zoning regulations and Ohio Drainage Law, your letter dated January 23, 2017 qualified as a verified complaint under ORC Section 3745.08.

As required by Section 3745.08 of the Ohio Revised Code ("ORC"), after receipt of your verified complaint letter, Ohio EPA conducted an investigation into the allegations and determined the following findings of facts:

Findings regarding Allegation of Violations of the LAMP Permit

- The November 13, 2014 LAMP permit authorized Stansley Industries Inc. to use lime residuals, drinking water treatment material ("DWTM") generated from the City of Toledo, Collins Water Treatment Facility mixed with soil for the purpose of increasing elevation and improving drainage on any property in Ohio.
- Prior to receiving the verified complaint, Ohio EPA conducted inspections of the Rocky Ridge property on September 27, 2016 and October 4, 2016 to determine compliance with the November 13, 2014 LAMP permit.
- The evidence suggests that Rocky Ridge excavated to bedrock and dug pits on the Rocky Ridge property. However, the digging of a pit and excavation to bedrock were not prohibited by the November 13, 2014 LAMP permit.

- The 2014 LAMP permit did not specify that the beneficial use of the DWTM blend was limited to “existing” low lying areas, nor did it prohibit filling a pit with DWTM blend created as a result of digging soils.
- Therefore, filling a low lying area with DWTM blend, even a low lying area created to obtain soils for blending, was within the general purpose of the November 13, 2014 LAMP permit.
- Ohio EPA also viewed video depicting liquid-like lime residuals pouring from a dump truck into a pit on the Rocky Ridge property. However, Ohio EPA could not conclude by virtue of visual observations that Rocky Ridge violated the Blending condition of not more than 35% lime residuals minimum 65% soil ratio required by the 2014 LAMP permit.

Although Ohio EPA concluded that excavation to bedrock and filling pits were not violations of the 2014 LAMP permit, during a meeting on December 19, 2016, Ohio EPA raised concerns with Rocky Ridge Development, LLC regarding implementation of the 2014 LAMP permit. Ohio EPA directed Rocky Ridge moving forward to maintain 5 feet from bedrock prior to filling the area south of the Quarry with DWTM Blend, where Rocky Ridge had excavated but where Rocky Ridge had not yet begun to fill with DWTM Blend. This would require Rocky Ridge to add soils back to the newly excavated area south of the Quarry.

On February 21, 2017 Ohio EPA conducted an inspection of the Rocky Ridge property. During that inspection Ohio EPA determined that Rocky Ridge had placed five feet of soils in the L shaped area south of the Quarry, and Ohio EPA confirmed the placement of the 5 feet soil separation layer in that area.

Based upon Ohio EPA’s investigation and the above findings, Ohio EPA has determined that Rocky Ridge Development, LLC did not violate the LAMP permit BENUO20261.

Notwithstanding the above determination that Rocky Ridge Development, LLC did not violate the LAMP permit BENUO20261, in an effort to address concerns with implementation of the 2014 LAMP permit, Ohio EPA issued a modified LAMP permit on February 14, 2017, which supersedes the November 13, 2014 LAMP permit, and which includes the following conditions:

- limits the placement of DWTM blend to existing low lying areas;
- requires maintaining 5 feet of separation from bedrock prior to placement of DWTM blend on the property;
- prohibits the filling of DWTM Blend in areas on the property excavated for the purpose of creating low lying areas;
- requires that DWTM is capable of passing the liquids paint filter test prior to mixing;
- requires Rocky Ridge/ Stansley Industries, Inc. to establish protocols to demonstrate that the final DWTM blend meets the homogeneous mixture of not more than 35% DWTM and not less than 65% soil mixture criterion; and,
- requires an additional monitoring well on the Rocky Ridge property, screened at the same level as existing wells, and ground water monitoring.

Allegations of Violations of the NPDES permit, Ohio water law and the Federal Clean Water Act

The verified complaint letter also alleged that:

- Rocky Ridge Development, LLC violated its NPDES permit and Ohio drainage law on January 12, 2017, by allowing a large volume of water to flow off the Rocky Ridge property and onto the neighboring property of Robert Jess.
- Roads near the Rocky Ridge property are frequently covered with lime residuals and are not being maintained by Rocky Ridge.
- Ohio water law and the Clean Water Act were alleged to have been violated, but no specific provisions were cited as having been violated.

Ohio EPA investigated these alleged violations and made the following findings:

- Rocky Ridge's NPDES permit regulates storm water runoff related to water quality.
- Ohio EPA did not find evidence that storm water discharges resulted in violations of water quality standards during its inspection on January 18, 2017.
- Ohio EPA does not have authority to regulate water drainage issues such as flooding except to protect water quality. Ohio EPA has no authority under Ohio drainage law.
- Rocky Ridge's NPDES permit requires that upon the failure of a storm water control, it shall be replaced with another control within ten days of inspection.
- During an inspection on January 18, 2017, Ohio EPA found that Rocky Ridge had dug a trench to alleviate and prevent off-site flooding from Rocky Ridge's property. This trench had been dug within the ten days allowed by the NPDES permit.
- Rocky Ridge's NPDES permit regulates vehicle tracking of waste materials off site.
- Ohio EPA has not documented that tracking of lime residuals on public roadways surrounding the Rocky Ridge property was observed during any of its inspections.

Based on the above findings, Ohio EPA has determined that Rocky Ridge Development, LLC did not violate its NPDES permit, Ohio water law or the Clean Water Act as alleged in the verified complaint letter.

It should be noted that during a December 15, 2016 inspection, Ohio EPA, DSW found Rocky Ridge in violation of its NPDES permit for failure to properly certify its most recently updated storm water pollution prevention plan and for failure to properly identify best management practices (BMPs) to be used onsite, the rationale for their selection, and the lack of detailed drawings or maintenance plans for post construction BMPs. On January 18, 2017, Ohio EPA, DSW found Rocky Ridge to be in violation of its NPDES permit for failure to properly stabilize numerous areas onsite that were not being actively worked. Notice of Violation letters ("NOVs") were sent on December 28, 2016 and on February 27, 2017, respectively, for the violations. The December 2016 NOV has been resolved. The February 27, 2017 NOV is still outstanding. Ohio EPA has directed Rocky Ridge to take action to resolve the February 27, 2017 NOV. However, the outstanding violation set forth in the February 27, 2017 NOV was not specifically alleged in the January 23, 2017 Complaint letter.

Based upon the results of the investigation and above findings, Ohio EPA does not determine that a violation, as alleged, has occurred, is occurring, or will occur. Pursuant to ORC Section 3745.08(B), "if the director does not determine that a violation, as alleged, has occurred, is occurring, or will occur, the director shall dismiss the complaint." Therefore, your verified complaint dated January 23, 2017 is hereby dismissed.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
30 East Broad Street, 4th Floor
Columbus, OH 43215

Please feel free to contact Janine Maney, Legal Office, Ohio EPA, at (614) 644-3037 if you have any further questions.

Sincerely,



Craig W. Butler
Director

Bc: Todd Anderson, Deputy Director for Legal Affairs
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