



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

February 1, 2017

Mr. Fred R. Gerken
Fred H. Gerken Company
1303 Oakwood Avenue
Napoleon, Ohio 43545

Re: **Fred H. Gerken Company
Resolution of Violation (ROV)
NPDES
Henry County
2GR01549**

Subject: Resolution of Violation

Dear Mr. Gerken:

Thank you for your response to Ohio EPA's May 13, 2016, Notice of Violation (NOV) letter. The violations were originally communicated to you during an exit conference following an inspection conducted on March 31, 2016. The documentation you submitted included: an October 14, 2016, e-mail with an attached letter; e-mails dated January 2, 5, and 11, 2017; a Storm Water Pollution Prevention Plan (SWP3) given to Jeremy Scoles, Ohio EPA, on January 12, 2017; and two January 20, 2017, e-mails with completed Quarterly Visual Assessment and Quarterly Inspection forms, a completed Annual Report form, and a sanitary sewer invoice; and a copy of the electronic submittal of a Notice of Intent (NOI) application form.

I have reviewed the documentation that you provided and have determined that Fred H. Gerken Company has now resolved all violations discovered during the March 31, 2016, inspection. To ensure that all the violations have been addressed, I have included Fred H. Gerken Company's response for each violation and its status.

Resolution of Violation

1. **ORC Section 6111.07 (A)**: No person shall violate or fail to perform any duty imposed by Sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.
MSGP Section 5.: The MSGP requires that you prepare a Storm Water Pollution Prevention Plan (SWP3) before submitting your Notice of Intent (NOI) permit application.

(a) An SWP3 had not been developed.

Resolution: On January 12, 2017, Jeremy Scoles, Ohio EPA Office of Compliance Assistance and Pollution Prevention, received a copy of Fred H. Gerken Company's SWP3 while onsite. Therefore, this violation has been abated.

2. **ORC Section 6111.07 (A)**: See Above.
MSGP Section 4.2.1 and 4.2.2: Quarterly Visual Assessment - A grab sample from each outfall (some exceptions are noted in the permit) must be taken each calendar quarter. Samples must be assessed for color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of pollution.

(a) Quarterly Visual Assessments had not been conducted.

Resolution: On January 20, 2017, Ohio EPA received Fred H. Gerken Company's e-mail response that included a completed Quarterly Visual assessment form. Therefore, this violation has been abated.

3. **ORC Section 6111.07 (A): See Above.**

MSGP Sections 4.1.1 and 4.1.2: Inspections - The MSGP requires at least quarterly routine documented inspections of all areas of the facility where industrial activities or materials are exposed to storm water and of all storm water control measures used to comply with this permit. At least one inspection must occur when storm water is discharging from your site. The reports need to include specific observations of the outfall structure/discharge, when the last measurable precipitation event occurred, and the size of the event.

(a) The facility had not begun conducting quarterly inspections.

Resolution: On January 20, 2017, Ohio EPA received Fred H. Gerken Company's e-mail response that included a completed Quarterly Inspection form. Therefore, this violation has been abated.

4. **ORC Section 6111.07 (A): See Above.**

MSGP Section 4.3.1 and 4.3.2: Comprehensive Site Compliance Evaluation – The MSGP requires that an annual comprehensive site inspection be conducted and the information included in the Annual Report form found in Appendix I of the permit.

(a) The Annual Comprehensive Site Compliance Evaluation had not been done.

Resolution: On January 20, 2017, Ohio EPA received Fred H. Gerken Company's e-mail response that included a copy of the Annual Reporting form completed on January 20, 2017, based on a December 31, 2016, inspection. Therefore, this violation has been abated.

5. **ORC Section 6111.07 (A): See Above.**

MSGP Section 2.1.2.9: Employee Training – The MSGP requires at least annual employee training of all employees who work in areas where industrial activities or materials are exposed to storm water, or who are responsible for implementing activities necessary to meet the conditions of this permit (e.g. inspectors, maintenance).

(a) Employee training had not been conducted and documented.

Resolution: On January 12, 2017, Jeremy Scoles, Ohio EPA Office of Compliance Assistance and Pollution Prevention, received a copy of Fred H. Gerken Company's SWP3 while onsite. It included a copy of the training topics and a completed sign-in sheet. Therefore, this violation has been abated.

6. **ORC Section 6111.07 (A): See Above.**

MSGP Section 2.1.2.4: Spill Prevention and Response - The permit requires the implementation of controls for the prevention and clean-up of spills. This includes material handling procedures, storage requirements, and clean-up procedures. The Spill Response Plan needs to include contact information for individuals or agencies that must be notified in the event of a spill, such as local emergency response agencies, the National Response Center, and Ohio EPA's Spill Hotline.

(a) Spill prevention and response had not been addressed.

Resolution: On January 12, 2017, Jeremy Scoles, Ohio EPA Office of Compliance Assistance and Pollution Prevention, received a copy of Fred H. Gerken Company's SWP3 while onsite. It addressed spill prevention and response. Therefore, this violation has been abated.

7. **ORC Section 6111.07 (A): See Above.**

MSGP Section 2.1.2.2, 2.1.2.3, 2.1.2.11: Good Housekeeping and Maintenance - The MSGP requires BMPs that result in the maintenance of a clean, orderly facility. You are also required to inspect, test, maintain, and repair all industrial equipment and systems to avoid situations that may result in leaks, spills, and other releases of pollutants.

(a) I observed: metal on the ground around the metal scrap roll-offs; significant amount of debris around the north trash compactor; gray material on the pavement near the north compactor; tires near the south compactor; and what appeared to be a fluid leak near the south compactor.

Resolution: The observations noted in the NOV were an administrative error. Therefore, this violation is removed/retracted.

8. **ORC Section 6111.07 (A): See Above.**

MSGP Section 2.1.2.5: Sediment and Erosion Control – The MSGP requires that exposed areas are stabilized and runoff contained using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.

(a) Northeast of building, the runoff from the upslope area, including Oakwood Avenue, crosses sidewalk and flows to right to Oberhaus Creek. The soil was not stabilized. No sediment controls were in place. No sediment controls were in place to address runoff from the bare areas east of Oakwood Avenue.

Resolution: On October 16, 2016, Ohio EPA received Fred H. Gerken Company's e-mail response, which stated that silt fence and a water control box had been installed and areas had been seeded. On January 20, 2017, Ohio EPA received Fred H. Gerken Company's e-mail response that stated that grass had been planted to stabilize the soil. Therefore, this violation has been abated.

9. **ORC 6111.04 (A)(1):** No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

OAC 3745-33-02(A): No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this chapter. Any person who holds a federal NPDES permit issued under Section 402 (a) of the act is not required to obtain an Ohio NPDES permit until its expiration date. The director shall administer and enforce permits issued under Section 402 (a) of the act within this state, and may modify the terms and conditions thereof, in accordance with division (J) of section 6111.03 of the Revised Code. This includes discharging land application systems as defined in rule 3745-42-13 of the Administrative Code.

OAC 3745-39-04(A)(1)(b): A discharge composed entirely of storm water associated with industrial activities shall obtain an Ohio NPDES permit.

- (a) Filling and grading activities had occurred east of Oakwood Avenue that had disturbed over an acre of ground. Storm water runoff from construction activities that will result in a cumulative earth disturbance of one acre or more are required to have permit coverage under Ohio EPA's National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities (CGP). Construction activities include, but are not limited to: clearing, grading, grubbing, filling, and excavating. Construction activities that disturb over five acres are included in the OAC 3745-39-04(B) definition of "storm water discharge associated with industrial activity". Ohio EPA does not have record of CGP coverage being granted for this project.

Resolution: On January 20, 2017, Ohio EPA received Fred H. Gerken Company's response that included a copy of an electronic NOI submitted on January 12, 2017. According to our records, the NOI application was processed on January 18, 2017, and given the Facility ID Number of 2GC04756. Therefore, this violation has been abated.

10. ORC Section 6111.07 (A): See Above.

MSGP Sections 2.1.2.10 and 5.1.3.4: Non-Storm Water Discharges –The MSGP requires the SWP3 to contain a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The SWP3 must include a description of the results of any test or evaluation, the evaluation criteria or testing method used, the date of the assessment and the onsite drainage points that were observed. All unauthorized non-storm water discharges must be eliminated.

- (a) The facility has not been assessed for the presence of non-storm water discharges.
- (b) Staff were not certain if the external catch basins and internal floor drains were actually connected to the storm or to the sanitary. Building drains must be connected to a sanitary sewer or permanently sealed.

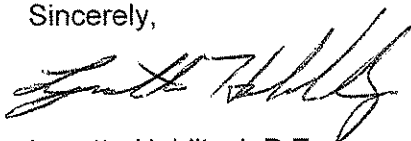
Resolution: On October 16, 2016, Ohio EPA received Fred H. Gerken Company's e-mail response, which stated that sewers had been installed on July 7, 2016. On January 20, 2017, Ohio EPA received Fred H. Gerken Company's response, which included an invoice dated July 14, 2016, for installing an eight-inch sanitary sewer from a building to the City of Napoleon's 21-inch sewer. Therefore, this violation has been abated.

Mr. Fred R. Gerken
February 1, 2017
Page Five

Please note that this does not preclude the Director from seeking administrative or civil penalties pursuant to Ohio Revised Code (ORC) Section 6111.07 for the violation(s) noted in the May 13, 2016, NOV letter. The decision on whether to pursue or decline to pursue such penalties regarding these violations is dependent on several factors, one of which is the company's future compliance with Ohio EPA regulatory requirements.

Should you have any questions, please contact me at (419) 373-3009 or lynette.hablitzel@epa.ohio.gov.

Sincerely,



Lynette Hablitzel, P.E.
District Representative
Division of Surface Water

/jlm

ec: Scott Sheerin, DSW, CO
Tom Poffenbarger, DSW, NWDO
Chad Lulfs, P.E., P.S., City Engineer, City of Napoleon
Jolynn Gerken
eDoc