



**Bishop's Creek Community Development Corporation**  
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February 25, 2011

Mr. Saji Villoth  
Environmental Enforcement  
Department of Natural Resources  
Southeast Region Headquarters  
2300 N. Dr. Martin Luther King, Jr. Drive  
Milwaukee, WI 53212-3128

MAR 14 2011

**RESPONSE AND DOCUMENTATION PER AGREEMENTS**

Related to our meeting with the Department of Natural Resources on February 8, 2011 which dealt with discussions of Notices of Violation issued in September 2010 and January 2011 and the request for additional documentation, please accept this communication as a formal response from Bishop's Creek Community Development Corporation per our internal review and counsel.

As such, please find the following responses and documentation enclosed:

1. Composite sampling report of samples taken on August 5, 2010 from areas #1 and #3 as provided by Giles Engineering.
2. An updated soil disposal summary as provided by Giles Engineering.
3. Erosion control inspection reports (submitted/forwarded to Susan Eichelkraut per this letter and enclosure).
4. An updated spreadsheet documenting all soil removed in July in accordance with the RAP.
5. Response to Notices of Violation
6. Written clarification relative to certain elements of the February 8, 2011 meeting summary Mr. Villoth transcribed and distributed to the meeting participants.

**Response to Notices of Violation**

1. **September 28, 2010 Notice of Violation:** Currently, work has commenced and is in progress to remedy the on-site concerns (erosion control inspections, permit compliance, stabilization issues, silt fencing, and tracking pad installation) with projected completion the 2<sup>nd</sup> Quarter of 2011. As stated in the February 8, 2011 meeting, no dewatering activities are occurring at the site. As a point of clarification related to delays in response times after the July 2010 flood damage, Bishop's Creek CDC was in the process of conducting its own investigation of the damage and was in communication with various internal and external parties to garner a full understanding of the matter. Additionally, it was unclear relative to which entity was directly responsible for reporting the damage per the unique circumstances of the source of the damages and the responsible parties to cure those damages therein. Our understanding was that said damages occurred on MMSD property and that the MMSD controlled the spillway itself.

2. **January 14, 2011 Notice of Violation:** In addition to responses submitted to the DNR by BB Services, and their legal counsel related to the investigation of this NOV; Bishop's Creek CDC does not accept responsibility for the issues noted in the January 14, 2011 NOV. We were unaware that said contractor took various materials to unapproved facilities. It is the responsibility of the contractor to appropriately work within the expected program guidelines, requirements, and regulations. Any suspected material taken to unapproved facilities can be addressed directly by the contractor(s) in question. As stated in the meeting on February 8, 2011 by Gordon Corrus related to the type of material and adjoining circumstances, it is our understanding based on our interaction with the contractor, BB Service, that the material in question was ostensibly concrete and brick, with little to no soil content (as taken from the Common Bond property on the southwest portion of the site) and no excavation-related material was taken from the Bishop's Creek site to the Patrick property. It is our understanding from the contractor that the concrete/brick material that was taken to the Patrick Property was initially accepted then rejected shortly thereafter because the Patrick Property owner informed BB Service that the concrete/brick material could not be properly used at that site. After which, BB Service took those loads back to the Bishop's Creek site and used the material as backfill in areas where foundations were removed. We also wish to comment on the timing of the DNR's soil tests at the Patrick property, as discussed in the Notice of Violation, relative to the time that the Bishop's Creek brick and concrete materials were taken to -- and then removed from -- the Patrick property. The Department's soil tests were conducted on certain soils taken from the Patrick property on July 15, 2010. Bishop's Creek materials were taken to -- and subsequently removed from -- the Patrick property in May, well before the July 15 sampling. The soils that were sampled could have been placed at the site before or after any materials from Bishop's Creek, and it is our belief that they came from other sources. It is our understanding that multiple contractors used the Patrick property for depositing various materials, for an extended period of time.

**Written clarification relative to certain elements of the February 8, 2011 meeting summary**

1. Giles representative's Last name is misspelled on several occasions and it should be spelled "Bugel."
2. Page 2 (Last Paragraph)... "Corrus stated that there had been no excavations. Gibson and Villoth stated that records show Giles had taken water samples from an excavation in May 2010.".... *Note: The excavator unearthed a buried concrete structure during footing excavation and removal activities in May 2010. The structure contained what appeared to be water and Giles was provided a sample at our Waukesha office from Genesis CM for laboratory analysis and disposal profiling. The water was pumped out with a vacuum truck and disposed of by Future Environmental Services. The chain of custody was incorrectly labeled "excavation" water.*
3. Page 3 (First Complete Sentence) ... "Bugle stated Giles was only called out in July and August to take samples related to the dorm demolition; and also to see if soils from the railroad spur area could go to the Rowe quarry".... *Should Read: Bugel stated that Giles was on-Site in June 2010 to collect disposal confirmation samples from the railroad spur, to determine if this material could be transferred to the Rowe quarry; Giles was contacted by Genesis CM in July 2010 to collect post-excavation soil samples from the railroad spur area, and August 2010 to collect samples from the excavation area near the NE corner of Building #1 and the gabion repair area.*
4. Page 3 (Fifth Paragraph)... "She stated Giles sampling records show samples were not taken until August 6, 2010".... "Gibson stated that BB Service submitted invoices to the Department stating that the soils had been backfilled and compacted in these areas on July 26, 27, and 28, prior to Giles collecting the August 6 samples".... *Note: Giles Field Technician (Mr. Greg Roanhouse) distinctly recalled sampling a 4 to 5 foot deep excavation area on the NE corner of Building #1 and the sampling that was performed; this was the same time that gabion repair area was also sampled; the bank was washed away and difficult to sample.*

Over the past several years, Bishop's Creek CDC has worked compliantly and cooperatively with the DNR and other pertinent agencies to redevelop a rather difficult Brownfields site as we create a safer, cleaner neighborhood -- and one which provides decent housing, and more job opportunities. It is our aim to present the facts as we understand them and forge ahead towards completing a project that will fulfill the aforementioned mission and goal.

If you have any questions, you may contact me at (414) 466-1800 ext. 5166 OR Gordon Corrus at (262) 490-7607 OR Kevin Bugel (262) 544-0118.

Sincerely,

*Daren Daniels*

Daren Daniels  
Project Administrator

C: J. Hnat --- DNR (Electronic & Hard Copy of Letter Only)  
R. Sabre --- DNR (Electronic & Hard Copy of Letter Only)  
S. Eichelkraut--- (Electronic & Hard Copy of Letter w/ Erosion Control Inspection Reports)  
J. Gibson--- DNR (Electronic & Hard Copy of Letter Only)  
M. Enoch --- DNR (Electronic & Hard Copy of Letter Only)  
G. Corrus --- Genesis (Electronic Copy of Letter Only)  
K. Bugel --- Giles (Electronic Copy of Letter Only)

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