



Ken Cooke

From: "Ken Cooke" <ken.cooke@canewoods.com>
Date: Wednesday, June 28, 2017 1:39 PM
To: "Richard" <richard@lexingtonky.gov>
Cc: <chmartin@lexingtonky.gov>; "Jennifer Carey" <jcarey@lexingtonky.gov>; <Abigail.Rains@ky.gov>; "Deborah (EEC) Singleton" <deborah.singleton@ky.gov>; "Jake Gibbs" <jgibbs@lexingtonky.gov>; "Beth Musgrave" <bmusgrave@herald-leader.com>; "Angela R Poe" <apoe@lexingtonky.gov>
Attach: Derby Dr-Norfolk Southern - records sent 6-28-17.pdf
Subject: Response from Norfolk Southern to April 12, 2017 Notice of Violation issued by LFUCG

To: Richard Lamey, LFUCG Division of Water Quality

CC: Interested parties

This is to provide our comment and analysis to Norfolk Southern Railroad Corps. response to the April 12, 2017 Notice of Violation regarding discharge of silt, sediment, mud and rock into the MS4.

1. The respondent has not addressed specific evidence provided by LFUCG and others, including Friends of Wolf Run detailing the source of silt and sediment from rail road bed wasting from **hydraulic pumping, failure of discharge headwall and control structure and subsequent acute erosion** from the ditch line immediately adjacent to the discharge into the MS4 at the 272 Derby Drive Inlet.
2. The respondent issued an error in fact in paragraph 3 when he states that LFUCG has not had prior contact with the MS4.
 1. Record of communication December 30, 2015 from Ben Krebs by phone N&S Main, 865-521-1480, Local Track Supervisors (Joe Perez, Tony Burchfield) 859- 421-1696
 2. Record of communication February 3, 2016 from Ben Krebs to Joseph.spndone@nscorp.com and subsequent phone conversations.
 3. Contact by the complainant, Friends of Wolf Run by phone and email to Bryan Naranjo , System Manager Environmental Operations March 3  7, 2017
3. LFUCG has delegated authority to issue notices of violation and citations under the clean water act to detect, enforce and eliminate illicit discharges to their storm sewer system and Wolf Run creek through:
 1. Delegation of Clean Water Act Primacy to the Commonwealth of Kentucky VIA US Code Section 402 (b) and 40 CFR Part 123
 2. Delegation of Clean Water Act enforcement responsibility for the area in question from the Commonwealth of Kentucky to the MS4 via NPDES Permit KYS000002 issued May 1, 2015 and subsequent approval of the Illicit Discharge Detection and Elimination ordinances and provisions of it s Stormwater Quality Management Plan by US EPA and the Commonwealth of Kentucky.
 3. In communications with the Kentucky Division of Water over this specific issue, their instruction was to have LFUCG take primacy on notice and enforcement. (Abigail Rains, March, 2017)
 4. ***LFUCG is carrying out their due diligence*** under this delegated authority in issuing a Notice of Violation and have no cause to withdraw it. Norfolk Southern may not be subject to local ***permitting***, but they ignore the April 12, 2017 ***notice*** from LFUCG at their peril.
4. The respondent is claiming that other parties are contributing to the silt and sediment load coming off the rail road bed. Though there may be some minor impact;

1. One particular objectionable material we are finding clogging the MS4 is the **railroad ballast stone** itself, originating from acute erosion in the immediate vicinity of the outfall. We would like to know what party other than Norfolk Southern within this discrete watershed is using AREMA #4A crushed stone, and how that is being transported into the storm drain at Derby Drive. We feel confident that if Norfolk Southern has direct evidence of such source and transport, LFUCG will take appropriate action against the responsible party.
2. Second, The ditch line is contained within a small and discrete drainage area, primarily confined by the Railroad Rights of Way. Friends of Wolf Run has knowledge of only **two significant outside inputs** into the ditch line stemming from 2468 Eastway Drive and the parking lots behind 2201 Regency Road and adjacent properties. Our observation is that those two inputs provide only clear water during storm events. (The Eastway Wetland being a neighborhood water quality feature) We would be glad to add these inputs to our monitoring and documentation effort and would like LFUCG to consider doing the same during subsequent storm events to ensure they are not contributing to the parameters of concern.
3. If other discrete inputs are known by Norfolk Southern contributing to rock, mud, silt, sediment, settleable solids and suspended solids, we appreciate their offer to share their ***specific knowledge of locations and responsible parties*** with LFUCG.
5. Finally, the objectionable discharges occur during storm events in excess of 0.5 **◆◆◆** of rainfall in a 24 hour period, and then primarily on the upslope of the discharge hydrograph. Any inspection or sampling to observe the objectionable discharges would need to be conducted during that phase of the storm event. We have questions on the timing of the Norfolk Southern rail road inspections and if any occurred ***during*** storm events in the watershed. If not, we would request that they do so to see first hand the conditions of concern.

Friends of Wolf Run is maintaining an archive of information and records about this issue on our web site at the address below. If there are any errors in fact or opinion expressed there, please advise, will correct and amend as necessary.

<http://wolfrunwater.org/index.php/monitoring/dearfield-discharge/>

We appreciate LFUCG **◆◆◆**s action on our concerns and will continue to support your efforts to control the silt, sediment and other materials entering our storm sewer system and the Wolf Run watershed.

Sincerely,

Ken Cooke
Friends of Wolf Run Inc.
859-940-8234 (Cell)

From: Brooke Gray
Sent: Wednesday, June 28, 2017 8:47 AM
To: 'ken.cooke@canewoods.com'
Subject: Open Records Request

Hi Mr. Cooke,

Attached is the response to your open records request. Feel free to contact me if you have any questions.

Thanks,

Brooke Gray
Program Specialist
Water Quality

859.425.2409 office
lexingtonky.gov

