



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Report Title: Clean Water Act Compliance Inspection Report
Inspection Date(s): 05/26/2021
Regulatory Program(s): National Pollutant Discharge Elimination System (NPDES)
Type of Activity: Construction Stormwater
Site/Facility Name: Cypress Pointe A
Permittee(s): Top Drawer, LLC
Site/Facility Operator: Top Drawer, LLC
Site/Facility Address: Ship Builders Drive & Woodland Ferry Road, Laurel, DE 19956
Latitude: 38.582161
Longitude: -75.625317
County/Parish: Sussex
General Permit No.: DE0051268
Site Specific Permit No.: DEC006311
NAICS Code: 236115
SIC: 1521
Unique Project #: 3E21WN115A

Site/Facility Representative(s): **Point of Contact**

Scott Penner



Phone: (302) 542-7813 Email: scottdgh@yahoo.com

EPA Inspectors:

Amanda Pruzinsky

Phone: (215) 814-5456 Email: Pruzinsky.Amanda@epa.gov

Peter Gold

Phone: (215) 814-5236 Email: Gold.Peter@epa.gov

State/Local Inspectors:

Bonnie Arvay, Delaware Department of Natural Resources and Environmental Control (DNREC)

Phone: (302) 387-2345 Email: Bonnie.arvay@delaware.gov

Chris Zakrociemski, Sussex Conservation District

Phone: (302) 245-1633 Email: N/A; No longer with the Conservation District

Report Preparer
Signature/Date

Amanda Pruzinsky, Enforcement Officer
NPDES Enforcement Section (3ED32)

Supervisor
Signature/Date

Mark Zolandz, Acting Chief
NPDES Enforcement Section (3ED32)

Unique Project#: 3E21WN115A

Table of Contents

I. Introduction	3
A. Inspection Opening Conference	3
B. Weather and Precipitation Conditions.....	3
C. Summary of the Site/Facility.....	4
II. Site/Facility Activity	4
III. Observations	5
IV. Records Review	9
V. Closing Conference.....	11

List of Attachments

Attachment A:	DE NPDES Construction General Permit DE0051268
Attachment B:	Notice of Intent
Attachment C:	Approved Sediment & Stormwater Management Plans
Attachment D:	Photograph Log
Attachment E:	Facility Submitted Self Inspection Reports
Attachment F:	Sussex Conservation District Inspection Reports

I. Introduction

On May 26, 2021, an inspection team composed of staff from the U.S. Environmental Protection Agency (“EPA”) Region III (hereinafter, “EPA Inspection Team”) conducted a CWA NPDES Stormwater Construction Inspection of the Cypress Pointe A site (hereinafter, “the site”). The purpose of the inspection was to observe compliance with the Clean Water Act (CWA) and to verify compliance with the site’s National Pollutant Discharge Elimination System (NPDES) Permit No. DE0051268 Site Specific No. DEC006311 (hereinafter, the “Permit”) and applicable State and Federal regulations.

A. Inspection Opening Conference

The EPA Inspection Team arrived at the site at est. 1:30 PM for the inspection. Inspectors met with the following site representatives:

Table 1: Inspection Attendee List

Name	Affiliation	Telephone	Email
EPA Region III Inspectors and Contractors			
Amanda Pruzinsky	EPA Region III	(215) 814-5456	Pruzinsky.Amanda@epa.gov
Peter Gold	EPA Region III	(215) 814-5236	Gold.Peter@epa.gov
Site/Facility Representatives			
Scott Penner	David G Horsey and Sons	(302) 542-7813	scottdgh@yahoo.com
James Scully	Insight Homes	-	-
State or Local Representatives			
Bonnie Arvay	DNREC	(302) 387-2345	Bonnie.arvay@delaware.gov
Chris Zakrociemski	Sussex Conservation District	(302) 245-1633	N/A; No longer with the Conservation District

Amanda Pruzinsky and Peter Gold displayed their credentials to Scott Penner at the outset of the inspection, and explained the purpose of the inspection was to observe compliance with its Permit. A copy of the Permit is provided in Attachment A. The EPA Inspection Team informed Scott Penner that any information that the Facility deemed to be confidential business information (“CBI”) should be identified to EPA representatives during the inspection and it would be handled as CBI according to EPA’s CBI procedures.

B. Weather and Precipitation Conditions

During the inspection, weather was sunny; no precipitation. National Oceanic and Atmospheric Administration (NOAA) National Weather Service precipitation data for the date of the inspection and 5 days prior are provided in the Table 2 below:

Table 2. Precipitation Data

Station Name	Date	Precipitation Amount (inches) ¹
LAUREL 3.5 NNE, DE US US1DESS0064	5/21/2021	0
LAUREL 3.5 NNE, DE US US1DESS0064	5/22/2021	0

¹ Source: NOAA National Climatic Data Center (<http://www.ncdc.noaa.gov/>).

Station Name	Date	Precipitation Amount (inches) ²
LAUREL 3.5 NNE, DE US US1DESS0064	5/23/2021	0
LAUREL 3.5 NNE, DE US US1DESS0064	5/24/2021	0
LAUREL 3.5 NNE, DE US US1DESS0064	5/25/2021	0.02
LAUREL 3.5 NNE, DE US US1DESS0064	5/26/2021	0

C. Summary of the Site/Facility

The total area of the site is 108.6 acres with 56.60 acres being identified for disturbance. The site is being developed into a residential housing development.

II. Site/Facility Activity

During the inspection, the EPA Inspection Team observed the active construction part of the site. The construction site representatives stated that the construction was in Phase 2b. Homes were being built along the east part of Broad Creek Circle. At the time of the inspection, most of Broad Creek Circle had been constructed, and, according to the plans, it will eventually loop around and meet the section of the project that is already completed, including the west side of Broad Creek Circle. Timber Circle and the surrounding area had not been constructed. Pond 3 was partially excavated.

The inspection observations were made pursuant to the requirements of the Permit. The observations from the inspection are described in detail below in the Observations section. Photographs were taken during the inspection by Peter Gold. Photographs pertaining to the inspection report are attached in Attachment D, with additional photographs being kept on file.

The Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit was dated received on October 21, 2020 (Attachment B – Notice of Intent).

Permit Part 1.D Effluent Limitations establishes requirements for managing runoff from construction activities.

Permit Part 1.E.1 Sediment and Stormwater Management Plan requires an approval of a Sediment and Stormwater Management Plan (Plans), compliance with the approved Plans, as well as with the Federal effluent limitations at 40 CFR §450.21. “Sediment and Stormwater Management Plan (Plan) The owner shall develop, fully implement, and maintain at the site, the approved Plan. The plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”

Cypress Pointe Sediment & Stormwater Management Plan were approved on September 9, 2019 and are provided in Attachment C – Approved Sediment & Stormwater Management Plans (Approved Plans).

² Source: NOAA National Climatic Data Center (<http://www.ncdc.noaa.gov/>).

Approved Plans Sediment and Stormwater Notes:

“E) All erosion and sediment control practices shall comply with the Delaware Erosion and Sediment Control Handbook, latest edition.”

III. Observations

The following section summarizes the EPA Inspection Team’s observations relative to the Permit requirements and approved Sediment & Stormwater Management Plans.

Posting of Permit Coverage**Permit Part 1.C.10 Requirement to Post a Notice of Permit Coverage**

“A sign or other notice of permit coverage must be posted at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.

If the active part of the construction site is not visible from a public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.

The notice must include:

- a. The NOI Number;
- b. Contact name and phone number to obtain additional construction site information;
- c. Contact name and phone number to obtain a copy of the approved plan; and
- d. The following statement “If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, call the DNREC’s Spill Notification 24 HR Hotline at 1-800-662-8802.”

Observation #1:

At the time of the inspection, no Notice of Permit Coverage was posted.

Silt Fence Maintenance

Permit Part 1.E.1 of the Permit states, “The owner shall develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity...”

Permit Part 1.D.1 Erosion and Sediment Control Requirements states, “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants....”

Permit Part 1.D.1.3 of the Permit states, “Install sediment controls along any perimeter areas of the site that will receive pollutant discharges.”

Delaware ESC Handbook 3.1.2-2, Design Criteria regarding silt fence “Silt fence must be inspected on a regular basis. Even though a rain event may not have occurred, it should still be inspected for possible wind damage. Repairs should be made immediately. Accumulated sediment should be removed when it has reached 1/2 the exposed height of the fabric.”

Delaware ESC Handbook Detail No. DE-ESC-3.1.2.1 of the Sediment and Stormwater Management Plan states “Maintenance shall be performed as needed and material removed when “bulges develop in the silt fence.”

Delaware ESC Handbook Detail No. 3.1.2-1 and Detail No. 3.1.2.1 of the Sediment and Stormwater Management Plan, Design Criteria regarding silt fence “Embed fabric minimum 8” vertically into ground.”

Observation #2:

The EPA Inspection Team observed areas where silt fencing along Broad Creek Circle and active lots there was ripped, down, removed from stakes, and/or required cleanout (Attachment D Photograph Log: DSCN0438, DSCN0453, DSCN0454, DSCN0455, DSCN0461, DSCN0463, DSCN0464, DSCN0472, DSCN0474, DSCN0475, DSCN0482, DSCN0487, DSCN0488, DSCN0489).

Storm Drain Inlet Protection

Permit Part 1.D.1.8

“Protect storm drain inlets.

- a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site.
- b. Clean, or remove and replace, the protection measure as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.”

Observation #3:

The EPA Inspection Team observed storm drain inlets along Broad Creek Circle with Inlet Protection Type 2, geotextile inlet inserts, in place with accumulated sediment in the bags, clogged bags containing sediment and water, as well as sediment accumulation adjacent to the inlet (Attachment D Photograph Log: DSCN0440, DSCN0441, DSCN0442, DSCN0444, DSCN0466, DSCN0468, and DSCN0469). There was evidence of sediment accumulation along the active roadway of Broad Creek Circle leading to the inlets from the site’s disturbed areas (Attachment D Photograph Log: DSCN0447, DSCN0449, and DSCN0464).

Stablized Construction Entrance and Sediment Track-out

Permit Part 1.D.4

“Minimize sediment track out.

- a. Restrict vehicle use to properly designated exit points;
- b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook;
- c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit, and
- d. Where sediment has been tracked-out from the site onto paved roads, sidewalks, or other paved areas outside of the site, remove the deposited sediment by the end of the same business day in which the track-out occurs or by the end of the next business day if track-out occurs on a non-business day. Remove the track-out by sweeping, shoveling, or vacuuming these surfaces, or by using other similarly effective means of sediment removal. It is prohibited to hose or sweep track-out sediment into any stormwater conveyance, storm drain inlet or waters of the State unless the conveyance is connected to a sediment basin, trap, or similarly effective control.”

Approved Plan Detail No. DE-ESC-3.7.1 Standard Detail & Specifications Erosion and Sediment Control for Minor Development

“2. Restrict all lot access to stabilized construction entrance to prevent vehicles from tracking mud onto roadways...

7. Maintain the Control Practices.

- a. Maintain all erosion and sediment control practices until construction is completed and the lot is stabilized.
- b. Inspect the control practices a minimum of twice a week and after each storm event, making any need repairs immediately....”

Delaware ESC Handbook for Standard Specifications for Stabilized Construction Entrance 3.4.7-1 Maintenance Criteria states:

“The entrance shall be maintained in a condition which will prevent tracking of sediment onto public rights-of-way or streets. This may require periodic top dressing with additional aggregate. All sediment spilled, dropped, or washed onto public rights-of-way must be removed immediately. When necessary, wheels must be cleaned to remove sediment prior to entrance onto public rights-of-way.

When washing is required, it shall be done on an area stabilized with aggregate which drains into an approved sediment trapping device. All sediment shall be prevented from entering storm drains, ditches, or watercourses.”

Approved Plan Detail No. DE-ESC-3.4.7 Standard Detail & Specifications Stabilized Construction Entrance

“Stone size – Use DE #3 stone.”

Observation #4:

The EPA Inspection Team observed sediment track-out from disturbed area to an active roadway Board Creek Circle (Attachment D Photograph Log: DSCN0448 and DSCN0450). Inlet protection was present showing accumulated sediment outside and

inside the bags (see Observation #3). Site representatives stated that they conduct street sweeping twice a week.

Observation #5:

One of the single residence lot construction entrances along Board Creek Circle had the incorrect stone size and the construction entrance was not the full width at ingress and egress (Attachment D Photograph Log: DSCN0471). One of the single residence lot construction entrances along Board Creek Circle showed evidence of missing aggregate and sediment in the active roadway (Attachment D Photograph Log: DSCN0448).

Waste Management

Permit Part 1.D.4.b.

“Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present of the site to precipitation and stormwater...”

Permit Part 1.D.4.3

“For waste management:

- a. All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody.
- b. Waste materials shall be salvaged and/or recycled whenever possible.
- c. The dumpsters shall be emptied a minimum of twice per week, or more if necessary. The licensed trash hauler is responsible for cleaning out dumpsters.
- d. Trash shall be disposed of in accordance with all applicable Delaware laws....”

Observation #6:

The EPA Inspection Team observed a weathered pile of construction debris, including hay bales (Attachment D Photograph Log: DSCN0495). This was along where Broad Creek Circle had not been constructed to-date, close to where the east entrance to Timber Circle will be constructed.

Observation #7:

The EPA Inspection Team observed uncovered/unlidded dumpsters on site containing waste materials along Board Creek Circle (Attachment D Photograph Log: DSCN0446, DSCN0477, and DSCN0483).

Concrete Washout

Permit Part 1.D.4.4 a, b, and e

“For equipment maintenance:

- a. If possible, equipment should be taken to off-site commercial facilities for washing and maintenance.
- b. If performed on-site, vehicles shall be washed with high-pressure water spray without detergents in an area contained by an impervious berm...
- e. Washout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal....”

Permit Part 1.D.4.5.j.

“Clean up spills

- i. If it is safe to do so, immediately contain and clean up any chemical and/or hazardous material spills.
- ii. Properly dispose of used oil, fluids, lubricants and spill clean-up materials.
- iii. Do not bury spills or wash down with water.”

Observation #8:

During the inspection, the EPA Inspection Team observed staff conducting washout of a concrete truck on an active roadway section of Broad Creek Circle in an area that drains to storm water inlets on site with no impervious berm present (Attachment D Photograph Log: DSCN0437).

Observation #9:

There was a designated concrete washout area with signage (Attachment D Photograph Log: DSCN0490 and DSCN0491). At the time of the inspection, there was evidence of a concrete washout spill next to the concrete washout area (Attachment D Photograph Log: DSCN0493). This was near the end of where the east side of where Broad Creek Circle had been constructed to-date.

Soil Stabilization

Permit Part 1.D.1 “Stabilize exposed portions of the site. Implement and maintain stabilization measures (e.g. seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blanket, hydromulch) that minimize erosion from exposed portion of the site. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days....”

Observation #10:

The pond identified as Pond 3 was partially excavated and unstabilized (DSCN0497 – Pond). Facility representatives stated that this excavation was “start and stop” over an extended period of time. The Sussex Conservation District noted in their October 5, 2020 inspection report that topsoil was being stripped and grading was ongoing for the pond and in their November 11, 2020 that excavation was ongoing (Attachment F).

IV. Records Review

During the opening conference, the EPA Inspection Team requested documentation including: Permit (Attachment A), Notice of Intent (Attachment B), Sediment & Stormwater Management Plans (Attachment C), and Self Inspection Reports from February 1, 2021 to the date of the inspection (Attachment E) . The requested documents were sent to the EPA Inspection Team and received on June 3, 2021. Records pertaining to the inspection report are attached, with additional records being kept on file.

Monitoring and Record Keeping

Permit Part 1.E.2 Monitoring

“For the purposes of this Part, the operator(s) must conduct maintenance inspections of erosion and sediment controls and constructed stormwater management measures at least weekly... After the first earth disturbance occurs on the site, and thenceforth during the entire period of permit coverage whether the site is active or inactive, the permittee shall conduct inspections of the permitted area. The person(s) inspecting the site must be a responsible person or a CCR. The responsible person and CCR must have successfully completed a Department-sponsored certification course.”

Permit Part E.3 Record Keeping

“The operator(s) shall retain records of all information required by this CGP for a minimum of three (3) years following acceptance of the NOT. During construction, the operator(s) must maintain at the site weekly reports of all inspections conducted in accordance with Part 1.E.2 of this CGP, which include:

- a. The date and time of the inspection;
- b. The name(s) of the individual(s) who performed the inspection;
- c. An assessment of the condition of erosion and sediment controls, and constructed stormwater management measures;
- d. A description of any erosion and sediment control and stormwater management measures’ construction or implementation, and maintenance performed on those measures; and
- e. A description of the site’s present phase of construction.

Persons subject to this CGP shall maintain all inspection reports, notices of violations, enforcement actions, and correspondence issued by the Department, its authorized agents, the appropriate plan approval agency, or a Certified Construction Reviewer.”

Observation #11:

The EPA Inspection Team requested Self Inspection Reports from February 1, 2021 to the date of the inspection. Inspection Reports provided were dated for each week between the “Week of 3/1/21” through the “Week of 5/17/21.” No self-inspection reports were provided for the month of February 2021 or the week of the EPA inspection. The inspection reports provided did not include the specific date, time of the inspection, the names of the individuals who performed the inspection, or the phase of construction (Attachment E). Site representatives stated that currently the self-inspections are not being conducted by a Certified Construction Reviewer (CCR) due to the size of the current active area.

Corrective Action Deadlines

Permit Part 1.E.7.1 Conditions Triggering Corrective Action.

“Corrective action measures must be taken to address any of the following conditions identified at the site:

- a. A control measure needs repair or replacement;

- b. A control measure necessary to comply with the requirements of the CGP was never installed, or was installed incorrectly,
- c. The discharges are causing an exceedance of applicable water quality standards; or
- d. A prohibited discharge has occurred (see Part 1.B.4).”

Permit Part 1.E.7.2 Corrective Action Deadlines

“For any corrective action triggering conditions in Part 1.E.7.1, the following must occur:

- a. Take necessary steps to address the condition, including cleaning up any contaminated surfaces so the material will not discharge in subsequent storm events;
- b. When the problem does not require a new or replacement control or significant repair, the corrective action must be completed by the close of the next business day;
- c. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, no longer than seven (7) calendar days from the time of discovery.”

Observation #12:

The Self Inspection Reports provided by site representatives on June 3, 2021 were dated “Week of 5/17/2021” through “Week of 3/1/21.”

- Weekly Self Inspection Report “Week of 4/5/2021” through “Week of 4/12/2021” list as a SWPPP repair: “lot 66 remove concrete washout spillage off lot.”

V. Closing Conference

After the site walk, the EPA Inspection Team met with the site representatives for a closing conference. The EPA Inspection Team shared preliminary observations with the facility. The EPA Inspection Team reiterated to the facility representatives that all preliminary observations discussed were not compliance determinations. Any and all preliminary observations shared were subject to further investigation by EPA upon the additional review of records and documentation. Additional observations may be contained in this inspection report that were not identified at the time of the closing conference after EPA reviewed additional materials following the inspection.

The inspection concluded at approximately 2:45 PM.