

**REPORT OF CONSTRUCTION STORMWATER
COMPLIANCE EVALUATION INSPECTION (CEI)**

**AT
Cedar Grove
Research Park Drive and Legends Drive
Lawrence, KS 66049**

NPDES NO: KSR113296

February 22, 2021

**BY
U. S. ENVIRONMENTAL PROTECTION AGENCY
Region 7
Enforcement and Compliance Assurance Division (ECAD)**

INTRODUCTION

I performed a Compliance Evaluation Inspection (CEI) at the Cedar Grove residential development in Lawrence, Kansas, on February 22, 2021. The inspection was authorized by Section 308(a) of the Federal Water Pollution Control Act, as amended. This narrative report presents the findings of the inspection.

PARTICIPANTS

Cedar Grove

Roger D. Johnson, Partner, (785) 423-9100, rjohnson@alcoveproperty.com

U.S. Environmental Protection Agency (EPA):

Brian D'Alfonso, Biologist, (913) 551-5095, Dalfonso.brian@epa.gov

INSPECTION PROCEDURES

I contacted Mr. Johnson on Thursday, February 17, 2021, and stated that I needed to conduct an inspection at the Cedar Grove development on Friday, February 18, 2021. Mr. Johnson explained to me that he would be out of town on February 18, 2021, and he was the only contact person for the site. Mr. Johnson then explained the first phase was complete and work had begun on the remaining five acres of the project. He explained that a Notice of Termination (NOT) for the old approval had been submitted and a Notice of Intent (NOI) for the last five acres had been submitted. Due to Mr. Johnson being out of town and the new information that he had given me, I agreed to meet him on Monday February 22, 2021.

After speaking with Mr. Johnson, I called Larry Hook, Engineer, Kansas Department of Health and Environment (KDHE) on February 18, 2021. Mr. Hook is the Program Manager for the KDHE Construction Stormwater Program. I explained to Mr. Hook what Mr. Johnson had told me. Mr. Hook looked through his files and explained that he did not have a NOT for this site, but

he did have a note in his files concerning a NOT for this site. Mr. Hook explained that the facility had submitted a NOT in December of 2017, but the NOT was sent back to the operator for being incomplete. Mr. Hook stated that a completed NOT had not been returned. Mr. Hook explained that the site's original NOI was still active and was up to date on annual fees being paid. Mr. Hook stated during my call with him that there were no other active NOIs in the same section that this site was located.

I arrived at the Cedar Grove development at approximately 8:30 a.m. and met with Mr. Johnson. Prior to entering the facility, I conducted a visual reconnaissance of the facility searching for areas of concern observable from the public roads such as discharges, drainage patterns, flow directions, distance and direction of nearest perennial waters, visual condition of perennial waters, facility location, and layout. Cedar Grove is located west of Wakarusa Drive in Lawrence, Kansas. The site is north of Legends Drive along research drive. The development is bordered by Juniper drive on the west and Cedar Grove Way on the north and east.

Upon arrival, I presented my identification and explained the scope and purpose of the inspection. I also informed Mr. Johnson that I would be performing a complete Construction Stormwater inspection, which would consist of a visual inspection of the facility and review of records being maintained at the facility. During that time Mr. Johnson provided hard copies of the Stormwater Pollution Prevention Plan (SWPPP) for the site, full stormwater drawings, and copies of the inspections he had available.

Mr. Johnson stated he no longer owns RD Johnson Excavating. Mr. Johnson and Harry M. Hamid (also listed on NOI) are contractors in charge of the project with RD Johnson performing the excavating work. He stated that all building lots in the project were sold to other builders and he was only in charge of the excavating work, including grading, streets, and utilities. Mr. Johnson stated that the original SWPPP and stormwater plans were developed by Landplan Engineering. Mr. Johnson explained new plans were developed for the last five acres of the site and that was what they were working on at the time of inspection. Mr. Johnson provided information pertaining to the facility operation and accompanied me during the entire inspection.

I explained to Mr. Johnson that I would be conducting the construction stormwater inspection under the authority of Section 308(a) of the Federal Water Pollution Control Act to evaluate the facility's compliance status with the requirements of the Clean Water Act and with the National Pollution Discharge Elimination System (NPDES) permit, which was issued to the Kansas Department of Health and Environment (KDHE) on August 1, 2017 (attachment 5). I explained that the inspection would consist of a review of required records, the site SWPPP, and a visual inspection of the facility. I stated that I would document my findings and observations by making photocopies, taking photographs and/or videos, and obtaining statements from facility staff.

I conducted this inspection in accordance with the procedures described herein and followed all applicable EPA Region 7 Standard Operating Procedures (SOPs).

I completed the visual inspection on February 22, 2021. I summarized the findings and recommendations of the visual inspection with Mr. Johnson during the exit briefing. A Notice of Potential Violation (NOPV) was not left with Mr. Johnson. Photographs were taken during the inspection. See attachment 2 for the digital photographs and photo log. See attachment 3 for the facility layout.

FACILITY DESCRIPTION

Facility Operations

Cedar Grove is located north of the intersection of Research Park Drive and Legends Drive in Lawrence, Kansas. The site consists of approximately 35 acres to be disturbed with approximately 105 home lots. The legal description is Section 33, Township 12 South, Range 19 East. Storm water runoff generally flows in one direction as depicted on the SWPPP map. Stormwater flows to one of two stormwater basins on the south side of the site or the east side of the site. The stormwater basins discharge to the City of Lawrence's stormwater system.

Regulatory History

RD Johnson Excavating applied for coverage under the KDHE Stormwater Runoff from Construction Activities General Permit by submitting a NOI. KDHE approved the NOI on October 20, 2017 (attachment 4). The site had not been previously inspected by KDHE or EPA.

FINDINGS AND OBSERVATIONS

The following findings were noted during the visual and record review. A summary is provided in the NPDES Storm Water Worksheet (Construction) (attachment 1). The visual inspection findings were discussed with Mr. Johnson during the exit meeting. The weather conditions at the time of the inspection were partly cloudy and cold. The area had not recently received moisture. There was still some snow on the ground at the time of inspection and the ground was frozen solid.

Storm Water Pollution Prevention Plan (SWPPP)

The NPDES permit does require the facility to develop and implement a SWPPP. A copy of the SWPPP is to be on the site or readily available upon request. As stated above, Mr. Johnson provided a hard copy of the SWPPP (attachments 6).

I reviewed the SWPPP for completeness after the inspection and noted that the SWPPP was not complete and did not provide all details required by the NPDES permit. Also, the SWPPP was not being fully implemented.

The site's SWPPP is not a written plan but is a collection of short explanations contained on engineered drawings for the site (attachment 6).

Section 7.2.2 requires that the SWPPP, when in relation to each phase of construction, the Best Management Practice (BMP) and/or pollution control will be installed. There is a short description of general construction sequence in the SWPPP, but does not describe each phase of construction. This section also requires the SWPPP describe what site conditions must be met before removal of the BMP and/or pollution control if it is not permanent. The SWPPP does describe final stabilization, but does not specify when BMPs or pollution controls can be removed.

Section 7.2.10 requires that the permittee shall conduct site inspections as described in the general permit. This section, along with section 10.1, requires that the permittee maintain records for three years after the date on the NOT. At the time of inspection, Mr. Johnson explained that he only had inspection records pertaining to the construction of the five-acre section that they were starting at the time of inspection (attachment 7). These records only spanned from February 1, 2021 to March 1, 2021. Mr. Johnson explained that inspections for the first phase had been conducted and recorded, but the records were lost when his office was hit by a tornado in 2019. Mr. Johnson did not know when the last inspection had been conducted prior to the tornado. Between the tornado on May 28, 2019 and the date of my inspection, the only site inspections that had been conducted and recorded were the ones after February 1, 2021.

Other Visual Observations

During the inspection, I observed individual lots with completed homes, partially completed homes, and lots that had not been built on yet. These individual lots were in all different stages of stabilization. Section 8.3 of the general permit requires that an Individual Lot Certification (ILC) be completed when a lot is sold. When I asked Mr. Johnson if he had record of ILCs for the lots that were built or being built in the first phase, he stated he did not. Mr. Johnson explained that he did not know that the ILCs had to be completed when the lots were sold. Mr. Johnson stated that he believed the new owners of the lots were responsible for stormwater control. I explained to Mr. Johnson that the permittee was responsible for stormwater control and he should still be ensuring that stormwater control measures were being installed and maintained.

Throughout the inspection Mr. Johnson explained that the site was originally planned to span the entire 35 acres in the original NOI. He explained that the City of Lawrence made them leave the south five acres undeveloped. He explained that only recently had the city decided to allow them to finish developing the south five acres. Mr. Johnson then explained that when they had originally finished grading the first 30 acres, he had submitted the NOT to KDHE because he believed they were done with the site. He explained that he had believed his new engineers had submitted a new NOI for the five acres that they were currently working on. He stated that after he had talked to me the week before my inspection, he found out from his engineers that a new NOI had not been submitted for the five-acre portion. I explained to Mr. Johnson that I had spoken with Mr. Hook and the site's NOT had never been accepted and they had an active NOI with KDHE that included the five acres they were currently working on.

During my inspection, I observed approximately 15 individual lots from the original 30-acre phase that were currently disturbed (photos 1-3), making for greater than one-acre of disturbed area. Section 9 of the general permit states that termination of the project can be requested only if there is less than one acre per year being disturbed. The individual lots that I observed at the time of inspection either did not have any stormwater controls installed, or the controls they had were not maintained (photo 6). At the time of inspection, the ground was frozen, so there was no visible runoff. At the time of my inspection, the streets were generally clean, and I did not observe any evidence of sediment leaving the site.

Silt fencing in the current five-acre area and storm water inlet controls were adequate and in good condition at the time of inspection (photos 5-6). Both stormwater basins were vegetated and in good condition at the time of inspection.

After my inspection, I contacted Mr. Hook again and discussed my findings. Mr. Hook agreed that my observations showed the site was not subject to termination since more than one acre was being disturbed. I called Mr. Johnson after I spoke with Mr. Hook and explained that he should not terminate the old NOI, and the site should be finished under the original authorization. I explained that a new SWPPP could be developed, if so desired, or they could use the old SWPPP.

SUMMARY

The following potential violations were determined as a result of my inspection. These items were not shared with the operator at the time of inspection.

- 1) Site inspections were not conducted according to the SWPPP or the permit requirements.
- 2) Site inspections were not available for inspection
- 3) The SWPPP did not include when a BMP should be installed in relation to phasing or what site conditions must be met for removal of BMPs.
- 4) Individual lot certifications were not completed with new lot owners.
- 5) Sediment controls on individual lots were either not installed or not maintained.
- 6) Original NOI should not be terminated due to greater than one-acre being disturbed at the time of inspection.

Brian D'Alfonso
Biologist

Nicole Moran
Section Chief

ATTACHMENTS:

1. NPDES Storm Water Worksheet (Construction) (6 pages)
2. Photo Log and Photo Mount (4 pages)
3. Facility layout (1 pages)
4. Notice of Intent (5 pages)
5. KDHE Stormwater Construction Permit (59 pages)
6. Cedar Grove SWPPP (7 pages)
7. Inspection Logs (4 pages)