



Clean Water Act Section 404: Site Visit/Case Development

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

This report includes only factual information gained by documentation, onsite observations, and/or onsite interviews.

Inspector Name(s)	Delia Garcia, Ph.D.	Time In	2:00 PM	Start Date	October 12, 2023
		Time Out	4:00 PM	End Date	October 12, 2023
Inspector's Organization	U.S. Environmental Protection Agency, Region 7				
Organization Requesting Inspection (if different)					
Inspection Type	Evaluation	Inspection Status	Original		
Site Name	Deverger Lake				
Site Address*					
City*	De Soto	County*	Jefferson	State*	MO Zip Code* 63020
Mailing Address*	(b) (6)				
City*	St. Louis	County*	St. Louis	State*	MO Zip Code* 63131
Latitude*		Longitude*			
Estimated Size of Site (acres)	253.5	Is there a home on the site?	☐ Yes ☒ No		
Inspector Signature	DELIA GARCIA Digitally signed by DELIA GARCIA Date: 2023.12.04 13:22:52 -06'00'			Date	
Supervisor Signature	JODI BRUNO Digitally signed by JODI BRUNO Date: 2023.12.05 14:17:56 -06'00'			Date	

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Site Name	Deverger Lake	Start Date	October 12, 2023
		End Date	October 12, 2023
Inspection Purpose	Initial site visit		
Opening Conference			
☒ Presentation of Inspector Credentials			
Name and Title (Use N/A if owner/operator not available to join the inspection)			
Randal Deverger / Property Owner			
☒ Opening Conference			
Name of person authorizing access if applicable			
Randal Deverger			
Notes from Opening Conference			
Samantha Hollenberg with the U.S. Army Corps of Engineers, St. Louis District (COE), contacted Randal Deverger and arranged for a site visit on October 12, 2023. On October 12, 2023, I arrived at the site at 2:00 pm, accompanied by Hannah Lewis (U.S. Environmental Protection Agency) and Jaynie Doerr (COE). We were joined by Samantha Hollenberg shortly thereafter. Gene Fribis, from Fribis Engineering, and Randal Deverger, the property owner, were already present at the site. After introductions I presented my inspector credentials to Randal Deverger and explained the purpose and procedures of the 404 inspection. I also provided him with the confidentiality notice (Attachment 3) and a copy of Federal Codes 1001 and 1002 for his review. Samantha Hollenberg explained that the agencies had just received updated guidance on evaluating waters for jurisdiction, following the Supreme Court decision in Sackett v. EPA, 143 S. Ct. 1322 (2023). Therefore, she wanted to take another look at the impacted stream and determine if it was jurisdictional under the Pre-2015 Regulatory Regime. Hannah Lewis informed Randal Deverger that she would be conducting an inspection to evaluate the site's compliance with Section 402 of the Clean Water Act (findings will be provided in separate report). I asked Randal Deverger what the intended purpose was for building a dam, and he informed me that he wanted to have a lake for his family to recreate on the weekends. When I asked what the height of the dam would be, Gene Fribis stated that it would be approximately 16 to 17 feet high with an estimated pool size of 10 acres. I asked Randal Deverger when construction had started, and he replied that it had begun in June (Digital Globe imagery shows disturbance had already commenced by May 26, 2023 see Attachment 1). Following our initial discussions, we proceeded to walk along the stream and the area to conduct our observations. I completed my assessment shortly after 3:15 pm and we had a discussion regarding findings and next steps. No samples were taken during the inspection but I did take 22 photographs and 5 videos. See Attachment 2 for the digital chain of custody/photo and video log, and photographs.			
☐ Access Issues if Any			
Describe			
N/A			

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Site Name	Deverger Lake	Start Date	October 12, 2023
		End Date	October 12, 2023
Inspection Observations and Sample Collection			
Site Owner/Site Operator/Responsible Party (Name, title and contact information)			
Randal Deverger. Owner. (b) (6)			
Additional Persons Present at Inspection			
Hannah Lewis, Life Scientist, U.S. Environmental Protection Agency, Region 7 Samantha Hollenberg, Project Manager, U.S. Army Corps of Engineers, St. Louis District Jaynie Doerr, Missouri Section Chief, U.S. Army Corps of Engineers, St. Louis District Gene Fribis, P.E., Project Engineer, Fribis Engineering			
General Site Characteristics (layout of property, etc.)			
The property is located northwest of De Soto, Missouri within Jefferson County. The address is 2772 Stonehouse Road, De Soto, Missouri. The unnamed tributary to Dry Creek enters the property from the northeast property line. It flows in a southerly direction through the property until it exits the property along the southwest boundary (see Attachment 1). It then continues flowing in a southerly direction before flowing north into Dry Creek approximately 0.5 mile. The property is an irregular shape and encompasses approximately 254 acres. It is bordered by agricultural fields and forested areas.			
Purpose and Need for Discharge of Dredged and/or Fill Material			
Randal Deverger stated he purchased the property with the intent of creating a lake for his family's enjoyment on the weekends.			
Site Overview (Past inspections, site description, permits, etc.)			
On June 23, 2023, staff from the COE, Missouri Department of Natural Resources (MDNR), and Jefferson County conducted a site visit to evaluate the work that was done on the site. Following that site visit, MDNR sent the landowner a letter of warning and informed the landowner that he needed to apply for a stormwater permit.			
Scope of Inspection (Areas inspected or not inspected)			
I started my observations on the downstream of the impacted stream channel and walked upstream until I reached the undisturbed portion of the stream. I also made observations of a spring that contributed flow to the stream. I then headed back downstream and walked towards the property boundary and made some observations of the stream as it flowed into the adjacent property. Following our inspection, we drove west on Stonehouse Road in search of the confluence between the unnamed stream channel and Dry Creek but turned around before we came across it.			

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Site Name	Deverger Lake	Start Date	October 12, 2023
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Environmental Conditions (e.g., wind, rain, smoke, dust, temperature, snow)			
Clear sunny sky, temperature was in the mid 70s			
Field Work Conducted			
FINDINGS AND OBSERVATIONS Following introductions and the entrance interview I made some observations of the unnamed stream reach starting on the downstream disturbed section. The dam had been partially constructed, but had stopped just north of the stream channel (see photos 1, 21, and 22, Attachment 2). Water was flowing and present in the stream at the time of the inspection. Minnows were observed swimming within the stream channel at various locations. Stream width within the disturbed area was quite variable ranging from 2 to 15 feet across. The contractor had graded and heavily disturbed the stream. The riparian corridor that previously bordered the stream had been cleared. Heavy sediment deposits were visible throughout the stream channel (see photos 2, 3, and 5, Attachment 2). The landowner had placed some silt fences along a section of the stream, but they were not properly installed and were ineffective at controlling sediment runoff from the disturbed site. Heavy construction equipment was staged on the property, the excavator had the contractor's name written on it (Aubuchon Excavating). The contractor was not present during the inspection, but was present during the initial COE site visit on June 23, 2023. The area near the the construction equipment had been excavated, presumably to deepen the depth of the lake (see photos 10 and 17, Attachment 2). Material from this area was also utilized to construct the dam embankment. As I walked upstream closer to the undisturbed section of the stream, I asked Samantha Hollenberg to show me the spring that she had observed during her previous site visit. She walked me over to the area and I observed some water seeping from the ground (see photos 11-14 in Attachment 2 and videos 15 and 16). The spring was located in the hillslope approximately 80 feet from the stream. The source was barely visible amongst the leaf litter, but it was actively flowing down the hill towards the stream. Samantha Hollenberg informed me that the flow was greater during her previous site visit in June. I continued walking upstream until I reached the upstream limits of the stream disturbance. The undisturbed stream channel had bedrock outcroppings and pool and riffle complexes (see photos 19 and 20 in Attachment 2). Minnows were observed swimming within the pools, and the water was very clear. After completing my observations of the upstream section of the stream, I headed back downstream until I reached the downstream property line and made some observations of stream as it flowed off the property. Following the inspection we had a closing conference with the property owner (detailed below). The grading done on the site impacted approximately 1,500 linear feet of the stream channel. A Digital Globe image from May 26, 2023 shows some of the partial impacts to the stream (Attachment 1). Additional work was conducted after that date, but a more recent image is not available.			
Closing Conference			
Documents Received and/or Requested During the Inspection			
None			

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Site Name	Deverger Lake	Start Date	October 12, 2023
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Compliance Assistance Provided (If any)			
N/A			
Observations Relayed to Site Owner/Operator			
During the closing conference, the COE informed Randal Deverger that the work was done in jurisdictional waters and that a Clean Water Section 404 permit is required. There was discussion about the process for applying for a 404 permit, and the approximate time frame that it would take. Hannah Lewis also informed him that he was required to have an NPDES permit and that the silt fence was not properly installed and he needed additional erosion control measures.			
Actions Taken by Owner/Operator During the Inspection (If any)			
N/A			
Potential Issues of Concern Including Regulatory Citations			
Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. 1344. Section 404 of the CWA, 33 U.S.C. 1344, specifically requires a person to obtain a permit from the Secretary of the Army acting through the Chief of Engineers, commonly referred to as the United States Army Corps of Engineers, for any discharge of "dredged or fill material" into the "navigable waters" of the United States. The property owner did not apply for or receive a Section 404 permit prior to impacting approximately 1,500 linear feet of regulated waters. The impacts to the unnamed stream was done without authorization.			
Attachments*			
☒ Maps and Sketches ☒ Photographs (including location) and Photo Log ☐ Other (SSIP, Wetlands Delineation Forms, etc.)			
Attachment 1: Maps (5 pages) Attachment 2: October 12, 2023 Digital Image Log and Photos (30 pages) Attachment 3: Confidentiality Notice (1 page)			
Additional Notes			
Aubuchon Excavating, the contractor was not present during the inspection. Some of his equipment was still present at the site (photo 10 in Attachment 2).			