



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

1600 John F. Kennedy Blvd
Philadelphia, Pennsylvania 19103-2852

Report Title: Clean Water Act, Section 404 Inspection Report for the Johnson Farms Site
Inspection Date(s): 02/01/2023
Start Time: 9:00am **End Time:** 11:40am
Regulatory Program(s): Inspections authorized pursuant to Clean Water Act, Sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)
Site Name: Johnson Farms
Site Location: South of Slalom Drive (Virginia Beach Parcel ID: 14949977880000)
Virginia Beach, Virginia 23453
Latitude: 36.77212448° N **Longitude:** -76.051011° W
County/Parish: Virginia Beach
Site Owner: Johnson Farms LLC
Mailing Address: 158 Black Falls Road
Dahlonoga, GA 30533
Unique Project #: 3E23WW034A
Site Contact(s):
Josh Deans, site operator and owner of Tree Works LLC
Phone: (757) 338-5637 Email: vatreework@gmail.com
EPA Inspector:
Robert George, Inspector, 3ED31
Phone: (215) 814-2713 Email: George.Robert@epa.gov

**EPA Inspector
Signature/Date**

Robert George, Inspector, 3ED31
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103

Date

**Supervisor
Signature/Date**

Renee Bryant, Chief, SDWA & Wetlands
Section

Date

Unique Project #: 3E23WW034A

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I. Introduction

EPA was contacted about this Site by the U.S. Army Corps of Engineers, Norfolk District (“USACE”). The USACE received notification of alleged excavation of wetland drainage ditches, the discharge of side-casting material, and discharge of fill to construct an access road within potential wetlands on the Site. On November 11, 2022, the Environmental Protection Agency (“EPA”) notified the owner, Johnson Farms LLC, that the case had been referred from the USACE and the EPA is the lead enforcement agency for this new construction activity under Section 404 of the Clean Water Act (“CWA”). Mr. Carl Johnson notified EPA that he had sold the Site and he was unsure why the Virginia Beach mapping platform did not yet reflect the change in ownership. Mr. Johnson stated he would review his records for the contact information of the new owner. On January 13, 2023, Mr. Josh Deans, the new owner and site contact, contacted EPA via phone to discuss the Site.

This inspection was conducted by the EPA to evaluate the compliance of the Site with Section 404 of the CWA. The inspection date was coordinated with Josh Deans (“Mr. Deans”), the owner of Tree Works LLC, a tree pruning and removal business that operates onsite. Telephone conversations were held on January 18, 2023, and January 26, 2023, to discuss the Site and arrange the inspection. EPA assigned this inspection Unique Project Identification # 3E23WW034A.

A. Site Identification

The inspection was conducted on Johnson Farms, located to the south of Slalom Drive on Virginia Beach Parcel #14949977880000, Virginia 23453 (“Site”). The Site is owned by Johnson Farms LLC and is largely undeveloped. A small portion of the Site, located immediately to the south of Slalom Drive, appears to be utilized by Tree Works LLC to store vehicles and mechanized equipment. A gravel road extends from this storage area to the south and intersects a transmission-tower easement, which bisects the Site from east to west. The Site is further identified in map provided in Attachment 1.

B. Weather and Environmental Conditions

The weather conditions for the day of the inspection, Wednesday, February 1, 2023, were overcast and light showers with a recorded high temperature of 42° F at the Norfolk International Airport Station (USW00013737). In the 6-day period preceding the inspection there were four days of recorded rainfall at Station USW00013737, according to the National Oceanic & Atmospheric Administration’s Record of Climatological Observations as shown in Table 1 below.

Table 1. Seven Day Precipitation Data for the Site

Date	Precipitation (inches)
1/26/23	0.07
1/27/23	0.00
1/28/23	0.00
1/29/23	trace
1/30/23	0.42
1/31/23	0.02
2/1/23 (Inspection)	0.14

C. Inspection Opening Conference

The EPA inspection team entered the Site via Slalom Drive at approximately 9:00 AM and called Mr. Deans at 9:05 AM to inform him of their arrival. Mr. Deans stated that he was currently helping his staff to get started for the day and he granted approval to the EPA to begin the inspection. The observations recorded during the beginning of the inspection are detailed in the first paragraph of *Section III. Observations* below.

During the course of the inspection walkthrough, when the inspection team was at the transmission-tower easement, Mr. Deans was observed on an all-terrain vehicle and approached the EPA inspectors at approximately 9:30 AM. The EPA inspectors, Katelyn Almeter and Robert George, displayed their credentials to Mr. Deans at this time and explained that the purpose of the inspection was to document the conditions, collect photographs, and observe the status of the Site's compliance with Section 404 of the CWA.

The inspection attendees discussed the Site's recent history, including the clear-cut logging that occurred onsite in 2018 and the alleged construction activities that occurred thereafter. Mr. Deans stated that he had recently mowed paths through the dense early successional vegetation to allow for easier movement throughout the Site. He stated that this had the unintended consequence of attracting many snakes and that the area tends to revegetate quickly. He then stated that he wished to improve the trails through the placement of wood chips. The EPA inspectors responded that mowing does not constitute a regulated activity under Section 404 of the CWA, however, constructing a trail with wood chips placed in wetlands to prohibit vegetation growth would be a regulated activity and hence could require a permit from the USACE.

Additional discussion included the presence of wetlands onsite and recent vegetation changes that Mr. Deans had observed. Specifically, Mr. Deans stated that it was his belief that the usage of heavy equipment along the periphery of the transmission-tower easement during logging had caused ponding that resulted in the growth of broadleaf cattail (*Typha latifolia*; DSCN4352). The EPA inspectors replied that the removal of mature tree cover can significantly reduce transpiration resulting in more frequent inundation, thus, the change in the expression of hydrology does not equate to the creation of wetland hydrology.

The EPA inspectors informed Mr. Deans that an inspection report will be prepared following the inspection. Based on EPA's process, the inspection report is expected to be finalized within 60 days of the inspection and will be distributed to the inspection attendees thereafter. The Opening Conference concluded, and Mr. Deans drove away on his all-terrain vehicle.

The list of attendees is provided in Table 2 below.

Table 2. Inspection Attendees

Name	Affiliation	E-mail
Katelyn Almeter	EPA Region III	Almeter.Katelyn@epa.gov
Robert George	EPA Region III	George.Robert@epa.gov
Josh Deans	Site operator and owner of Tree Works LLC	vatreework@gmail.com

EPA has not made a determination on whether the site/facility is a small business. Should the site/facility find it applicable, the U.S. EPA Small Business Resources Information Sheet can be found at <https://www.epa.gov/sites/production/files/2017-06/documents/smallbusinessinfo.pdf>.

II. Site Activity

The northern portion of the Site appeared to be utilized by Tree Works LLC to store vehicles associated with tree pruning and removal operations. The EPA was contacted by the USACE, which had received and shared a tip alleging that logging, excavation of ditches and side-casting material, and construction of an access road had discharged fill into potential wetlands on the Site. These activities were the subject of the inspection.

III. Observations

Following the 9:05 AM call with Mr. Deans, the EPA began their walkthrough on the northern portion of the Site, which stored the following Tree Works machinery: a compact track loader, boom truck, chipper truck, and two light-duty trucks (DSCN4331-DSCN4333). The EPA inspectors continued southward on a recently mowed path through early successional vegetation (DSCN4333-DSCN4338, DSCN4339-DSCN4345). The vegetation community in this area was dominated by loblolly pine (*Pinus taeda*) saplings. Many tree stumps were visible throughout this area (DSCN4339). Potential ditches/linear flow paths were observed in some locations but appeared to be naturalized. In one feature, the water depth was 6-7 inches. The EPA inspection team continued to the south and intersected a transmission-tower easement (DSCN4346) where they encountered Mr. Deans and completed the Opening Conference, as detailed in *Section C. Inspection Opening Conference* above.

The walkthrough continued eastward toward West Neck Creek. The inspectors walked northward on a pre-existing trail that formed the eastern border of the Site along the western bank of West Neck Creek (DSCN4347 and DSCN4348). The walkthrough continued northward,

and no ditches were observed to be connected to the stream. The Site to the west appeared to have naturalized (DSCN4349 and DSCN4350).

The inspection team then returned to the transmission-tower easement and walked west to the central portion of the Site (DSCN4351-DSCN4354). Surface water was observed draining from the northern portion of the Site to the southern portion of the Site across the transmission-tower easement (DSCN4353). Immediately to the south of the transmission-tower easement, the inspection team observed an area where woody debris and wood chips were discharged (DSCN4355-DSCN4357, DSCN4360, DSCN4361). Henceforth, this area will be referred to as Area of Concern (“AOC”) 1.

Soil boring Bor-1 was documented at AOC-1 at 36.769635°, -76.054112° (See Site Figure [Attachment 2] and photos DSCN4358 and DSCN4359): [fill layer 8 inches deep] wood chips, [native soil surface 0-6 inches] 10YR 2/1 sandy loam; [6-16 inches] 10YR 2/1 sandy loam; [16-20 inches] 10YR 4/1 clay loam; and [20-24+ inches] 95% 10 YR 4/1 clay loam with and 5% 5YR 4/6 redoximorphic features. The observed soil profile met the technical definition of a hydric soil. The vegetation and hydrology were significantly impacted by the discharge of wood chips. Photos DSCN4365 through DSCN4368 illustrate the perimeter of the fill and contrast the filled area to the naturally occurring conditions on this portion of the Site.

The inspection team walked southward on a path that bordered the western branch of West Neck Creek and documented the conditions (DSCN4362). A culvert was observed draining the Site and discharging water into the stream (DSCN4363 and DSCN4364). The inspection team then walked northward and encountered Mr. Deans at the transmission-tower easement at approximately 10:40 am. Mr. Deans stated that he purchased the property in the fall of 2022 and the Site was left in a state of disrepair by the former lessee, Mr. Mason. Mr. Deans stated that he cleaned up the Site and that the pile of wood chips at AOC-1 preceded his ownership, however, he stated that he recently added two loads and spread them out.

The EPA walked northward on a gravel road that was located on the central portion of the Site. A goat enclosure was observed to the west of the road (DSCN4369). To the east of the road, a dirt pile with concrete pieces was observed to be placed in wetlands along the road (DSCN4371-DSCN4374). Henceforth, this area will be referred to as AOC-2 (Attachment 2).

The inspection attendees met at the parking area and an excavated hole that had been filled with woody debris was observed to the south of the parking area (DSCN4375- DSCN4377). Henceforth, this area will be referred to as AOC-3 (Attachment 2). The Closing Conference was then conducted.

IV. Records Review

A review of Site/facility records was not a component of the inspection; therefore, EPA is not expecting to access business records, including confidential business information (“CBI”). If the Site/facility owner wants to make a CBI claim on information or photographs collected by the

inspector during the inspection, he can submit a claim to EPA. After the Site/facility notifies EPA of the CBI, EPA representatives will mark the CBI as such, and it will be handled as CBI according to EPA's procedures.

V. Closing Conference

A. Overview

The Closing Conference was conducted at the conclusion of the walkthrough at approximately 11:30 am. The EPA relayed the findings as discussed in Section B below to Mr. Deans and stated that an inspection report would be completed and disseminated within 60 days.

B. Observations Relayed to Site Representative

The subjects of the Closing Conference included a discussion of the presence of wetlands onsite and the three AOCs that were observed within wetlands onsite. To summarize the AOCs were as follows and are illustrated in Attachment 2:

- AOC-1, wood chips/mulch and logs located to the south of the transmission-tower easement;
- AOC-2, pile of fill located to the east of the gravel road; and
- AOC-3, excavated hole that was filled with woody debris, located immediately to the south of the parking area.

Reclamation of AOC-2 and AOC-3 by returning the areas to natural, pre-disturbance grade was discussed and agreed to onsite. Pulling back the wood chips/mulch from the wetland areas at AOC-1 was also discussed. Mr. Deans said that he could implement those restoration activities, however, the current conditions were too wet, but he thought that he could do the work in April.

The EPA then discussed the widespread presence of wetlands onsite and shared with Mr. Deans that outside of the road, upland areas did not appear to be onsite. Mr. Deans referenced a figure provided by Virginia Beach that he claimed showed uplands on the western portion of the Site. The EPA cautioned that mapping is advisory in nature and are not representative of areas regulated under the CWA. Additionally, the EPA stated that based on observations it appeared that uplands were not present in at least one of the areas Mr. Deans indicated near the road. The EPA recommended obtaining an Approved Jurisdictional Determination from the USACE, which would provide Mr. Deans with an approved wetland/upland line of wetlands present onsite that are subject to federal jurisdiction under CWA. The EPA stated that since he was considering future development, an Approved Jurisdictional Determination could provide information that is valuable to his planning process. EPA stated that they would follow-up with Mr. Deans and provide him with an e-mail address to contact the USACE, Norfolk District. The Closing Conference concluded, and the EPA left the Site at 11:40 am.

C. Documents Requested or Received

There were no documents requested or received.

VI. List of Attachments

Attachment 1: Site Figure

Attachment 2: Photographic Log



Legend

-  Bor1
-  AOC1
-  AOC2
-  AOC3

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Site Map

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4331 Photo taken by: Robert George Notes: View of a Tree Work chipper truck located at the site entrance, south of Slalom Dr.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4332 Photo taken by: Robert George Notes: View of machinery associated with the forestry business onsite, including: a compact track loader, boom truck, chipper truck, and two light-duty trucks.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4333 Photo taken by: Robert George Notes: Westward view of forestry machinery observed onsite.

 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4334 Photo taken by: Robert George Notes: Southeastward view of the site.
 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4335 Photo taken by: Robert George Notes: View of a path that had been recently mowed through the early successional habitat onsite.
 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4336 Photo taken by: Robert George Notes: Woody debris located along the path that had been recently mowed through the early successional habitat onsite.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4337 Photo taken by: Robert George Notes: View of a path that had been recently mowed through the early successional habitat onsite.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4338 Photo taken by: Robert George Notes: View of a path that had been recently mowed through the early successional habitat onsite.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4339 Photo taken by: Robert George Notes: View of a stump that was left in place following the logging that occurred onsite in 2018.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4340 Photo taken by: Robert George Notes: View of a path that had been recently mowed through the early successional habitat onsite.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4341 Photo taken by: Robert George Notes: View of a path that had been recently mowed through the early successional habitat onsite.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4342 Photo taken by: Robert George Notes: View of a mowed area located on the eastern portion of the site.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4343 Photo taken by: Robert George Notes: Southward view of a mowed area located on the eastern portion of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4344 Photo taken by: Robert George Notes: View of a mowed area located on the eastern portion of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4345 Photo taken by: Robert George Notes: View of a mowed area located on the eastern portion of the site.

 A photograph showing a dirt road or path leading towards a transmission tower in the distance. The area is surrounded by trees and vegetation, with a cloudy sky above. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4346 Photo taken by: Robert George Notes: Westward view of the transmission-tower easement that bisected the site.
 A photograph of a narrow dirt trail winding through a wooded area. The ground is covered with grass and fallen leaves. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4347 Photo taken by: Robert George Notes: Northward view of a pre-existing trail that was observed on the eastern border of the site.
 A photograph of a small creek flowing through a wooded area. The water is calm, reflecting the surrounding trees. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4348 Photo taken by: Robert George Notes: View of West Neck Creek, which bordered the site to the east.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4349 Photo taken by: Robert George Notes: Westward view of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4350 Photo taken by: Robert George Notes: Westward view of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4351 Photo taken by: Robert George Notes: Wetland delineation flag observed along the periphery of the site.

 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4352 Photo taken by: Robert George Notes: Northward view of a palustrine emergent wetland, dominated by broadleaf cattail (<i>Typha latifolia</i>), located immediately to the north of the transmission-tower easement.
 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4353 Photo taken by: Robert George Notes: Southward view of surface water draining from the northern portion of the site across the transmission-tower easement.
 02.01.2023	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4354 Photo taken by: Robert George Notes: Northward view of a pre-existing gravel road that bisected the western portion of the site.

 A photograph showing a wooded area with a large pile of cut logs and wood chips on the ground. The ground is covered in brown leaves and wood chips. The background shows bare trees and a cloudy sky. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4355 Photo taken by: Robert George Notes: View of Area of Concern ("AOC") 1, where woody debris and wood chips were discharged.
 A photograph showing a wooded area with a large pile of cut logs and wood chips on the ground. The ground is covered in brown leaves and wood chips. The background shows bare trees and a cloudy sky. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4356 Photo taken by: Robert George Notes: View of AOC-1, where woody debris and wood chips were discharged.
 A photograph showing a wooded area with a large pile of cut logs and wood chips on the ground. The ground is covered in brown leaves and wood chips. The background shows bare trees and a cloudy sky. A date stamp "02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4357 Photo taken by: Robert George Notes: View of AOC-1, where woody debris and wood chips were discharged.

 A photograph showing a soil sample extraction site. A vertical ruler is placed in the soil, which is covered with brown leaves and mulch. The ruler is marked in inches. The date '02.01.2023' is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4358 Photo taken by: Robert George Notes: Soil sample extracted from soil Bor-1, exhibiting a reduced matrix.
 A photograph showing a soil sample extraction site. A horizontal ruler is placed on the ground, which is covered with brown leaves and mulch. The ruler is marked in inches. The date '02.01.2023' is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4359 Photo taken by: Robert George Notes: Soil sample extracted from soil Bor-1, exhibiting a reduced matrix.
 A photograph showing a view of logs discharged on the ground. The logs are stacked in a pile, and the background shows a forest with bare trees. The date '02.01.2023' is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4360 Photo taken by: Robert George Notes: View of logs discharged on at AOC-1.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4361 Photo taken by: Robert George Notes: View of logs discharged at AOC-1.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4362 Photo taken by: Robert George Notes: Eastward view of the southern portion of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4363 Photo taken by: Robert George Notes: Culvert that drained the southern portion of the site and discharged water into the West Neck Creek.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4364 Photo taken by: Robert George Notes: Culvert that drained the southern portion of the site and discharged water into the West Neck Creek.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4365 Photo taken by: Robert George Notes: Wood chips discharged into freshwater wetlands located at AOC-1.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4366 Photo taken by: Robert George Notes: Mulch and logs discharged into freshwater wetlands located at AOC-1.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4367 Photo taken by: Robert George Notes: Wood chips discharged into freshwater wetlands located at AOC-1. Note the difference in elevation in the foreground relative to the background.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4368 Photo taken by: Robert George Notes: View of an area where logs were discharged at AOC-1.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4369 Photo taken by: Robert George Notes: Westward view of a goat enclosure located on the central portion of the site.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4370 Photo taken by: Robert George Notes: Westward view of the central portion of the site.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4371 Photo taken by: Robert George Notes: Eastward view of AOC-2 where fill had been discharged.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4372 Photo taken by: Robert George Notes: Eastward view of AOC-2 where fill had been discharged.

	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4373 Photo taken by: Robert George Notes: Eastward view of AOC-2 where fill had been discharged.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4374 Photo taken by: Robert George Notes: Eastward view of AOC-2 where fill had been discharged.
	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4375 Photo taken by: Robert George Notes: Area to the south of the parking area that appeared to be excavated and filled with woody refuse. AOC-3

 A close-up photograph showing a pile of cut logs and woody debris on a grassy slope. The logs are of various sizes and are scattered across the ground. The background shows a line of trees and a clear sky. A date stamp ".02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4376 Photo taken by: Robert George Notes: Area to the south of the parking area that appeared to be excavated and filled with woody refuse. AOC-3
 A wide-angle photograph of a cleared area, likely a parking area, with two people standing in the distance. The ground is covered in dirt and debris. The background shows a line of trees and a cloudy sky. A date stamp ".02.01.2023" is visible in the bottom right corner of the photo.	Johnson Farms Date: February 1, 2023 Photo ID: DSCN4377 Photo taken by: Robert George Notes: Area to the south of the parking area that appeared to be filled with woody refuse. AOC-3