



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 1**

**5 Post Office Square, Suite 100**

**Boston, MA 02109-3912**

**VIA ELECTRONIC MAIL**

**DATED BY ELECTRONIC SIGNATURE**

Adam J. Brodsky  
Drohan Tocchio & Morgan P.C.  
175 Derby Street, Suite 30  
Hingham, MA 02043  
[abrodsky@dtm-law.com](mailto:abrodsky@dtm-law.com)

**RE: 98 Barker Street and 409 Washington Street – Pembroke, MA**

Dear Mr. Brodsky:

This letter concerns properties owned by your client 98 Barker Street Realty Trust and located at 98 Barker Street and 409 Washington Street in Pembroke, Massachusetts. In May 2023, the U.S. Environmental Protection Agency ("EPA") became aware of potential impacts to wetlands on these properties. Based on review of available aerial photography and information, and a site visit on May 22, 2023, EPA believes there could be violations of the federal Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, on the properties. *See* enclosed inspection report containing photographs and observations from EPA's site visit. Specifically, EPA's initial analysis indicates that forested wetlands covered by the CWA may have been filled, and/or altered sometime between 2021 and the present without the necessary authorization from the U.S. Army Corps of Engineers ("Corps"). *See* 33 U.S.C. §§ 1311, 1344.

EPA is also aware that the Town of Pembroke has issued an enforcement order that requires your client to hire a qualified individual to delineate wetlands on the properties listed above and develop a plan for restoration of the impacted wetlands. While EPA reserves its right to collect additional evidence and commence a federal enforcement action if warranted, at this time EPA strongly urges you to work cooperatively with the Town of Pembroke to remedy the wetland violations identified in the enforcement order.

In addition, EPA recommends that your client consult with the Corps before performing any additional work on portions of the properties potentially subject to the CWA and further notes that an after-the-fact permit may be required for any unpermitted fill and/or dredged material remaining in jurisdictional wetlands after the violations identified by the Town are addressed. Please contact Paul Maniccia of the Corps Regulatory Division Massachusetts Office by email at the email listed below or by phone at (978) 318-8515, if you have questions regarding this process, or about Corps permitting requirements generally.

Please feel free to contact me at the email address listed below if you have any question about the contents of this letter.

Sincerely,

LAURA  
BEVERIDGE

Digitally signed by  
LAURA BEVERIDGE  
Date: 2023.06.09  
17:46:49 -04'00'

Laura Beveridge  
Senior Enforcement Counsel  
Office of Regional Counsel  
(617) 918-1345  
[beveridge.laura@epa.gov](mailto:beveridge.laura@epa.gov)

Encls: EPA Inspection Report

Cc: Stephanie Tougas  
U.S. EPA, Region 1 – New England  
[tougas.stephanic@epa.gov](mailto:tougas.stephanic@epa.gov)

Art Egerton  
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Paul Maniccia, Chief  
Corps Regulatory Division, Massachusetts  
[Paul.M.Maniccia@usace.army.mil](mailto:Paul.M.Maniccia@usace.army.mil)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

**Date:** *Dated as shown on electronic signature(s)*

**Subj:** Inspection Report  
Clean Water Act  
98 Barker Street Realty Trust

**From:** Stephanie Tougas, Inspector

**Thru:** Ray Putnam, Inspector

**To:** File

**STEPHANIE TOUGAS**  
Digitally signed by  
STEPHANIE TOUGAS  
Date: 2023.06.09  
15:09:00 -04'00'

**I. Facility Information**

- A. *Facility Name:* 98 Barker Street Realty Trust
- B. *Facility Location:* 98 Barker Street and 409 Washington Street  
Pembroke, MA 02359
- C. *Facility Contacts:* Andrew Spath, Trustee  
41 Cavanagh Rd  
Scituate, MA 02066
- D. *ID No(s):* N/A

**II. Background Information**

- A. *Date(s) of inspection:* May 22, 2023
- B. *Weather Conditions:* Sunny, 60 degrees F
- C. *US EPA Representative(s):*  
Stephanie Tougas  
Ray Putnam
- D. *State/Local Representative(s):* None
- E. *Federally Enforceable Requirements Covered During the Inspection:*  
CWA Section 404
- F. *Previous Enforcement Actions:*  
None

### **III. Type and Purpose of Inspection**

Evaluation

### **IV. Facility Description**

The property is composed of two parcels: 98 Barker Street and 409 Washington Street (approximately 72 acres total). Mr. Spath and 98 Barker Street Realty Trust are listed as the owners of the property. Both USDA hydric soils and National Wetland Inventory wetlands are mapped across portions of the parcels. The wetlands on the site appear to flow into a tributary to Little Pudding Brook. At the time of the inspection, approximately 5 acres of land (based on aerial imagery) have been disturbed to varying degrees.

### **V. Inspection**

EPA sent Mr. Spath an access request letter prior to the inspection. Mr. Spath consented to EPA conducting an inspection on behalf of the 98 Barker Street Realty Trust.

We (Inspector Putnam and I) arrived at approximately 1:30PM. We were greeted by Mr. Spath and his attorney, Mr. Steve Rider.

I explained that based on aerial imagery and other publicly available data, we observed that some of the earth disturbance appeared to be in federally jurisdictional wetlands that may have required an Army Corps permit. Mr. Spath and Mr. Rider explained that the land is enrolled in the Massachusetts Chapter 61 forestland program, but that they had not properly submitted a cutting plan to MassDEP. I asked what they plan to do with the land, and Mr. Spath said they plan to continue to perform forestry activities and plant Christmas trees.

The group walked along the road towards the back of the clearing on the east end. As we walked, Inspector Putnam took various auger borings to observe the soils directly adjacent to the road. Some of these augers indicated that hydric soils were present. We came to an area where there were rows of trees planted with more woodchips. Mr. Spath said he brought in loam and then put woodchips down on top of the loam. The auger in this area indicated there were hydric soils below the loam and woodchips.

We proceeded to the end of the cleared area. We noted piles of logs and other stockpiles of gravel.

We walked back to the site entrance. Mr. Spath asked about planting the berms, to which I said that the berms should be stabilized, and plantings would help with that. At the end of the inspection, I told Mr. Spath that we would be in touch and that we would likely follow up with a letter advising him to consult with the Army Corps before doing additional work. I also explained that most earth disturbing activities over an acre that have potential to discharge require coverage under the Construction General Permit (CGP).

We departed at approximately 2:30PM.

Unless otherwise noted, this report describes conditions at the facility/property as observed by EPA inspector(s), and/or through records provided to and/or information reported to EPA inspector(s) by facility representatives and as understood by the inspector(s). This report may not capture all operations or activities ongoing at the time of the inspection. This report does not make final determinations on potential areas of concern. Nothing in this report affects EPA's authorities under federal statutes and regulations to pursue further investigation or action.

Photos:

|       |                                                |
|-------|------------------------------------------------|
| ATT1  | stream under Fairwood drive                    |
| ATT2  | other side of Fairwood drive looking at stream |
| ATT3  | wood chips on north side of road               |
| ATT4  | area filled with loam and wood chips           |
| ATT5  | tracks                                         |
| ATT6  | water extraction pump                          |
| ATT7  | rip rap, water flow                            |
| ATT8  | wood chips, tree pulled out                    |
| ATT9  | stockpiles                                     |
| ATT10 | tree debris                                    |
| ATT11 | tree debris                                    |
| ATT12 | looking at site from far east side             |
| ATT13 | back side of berm at front of site             |