



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8ENF-W-NW

SENT VIA EMAIL
DIGITAL READ RECEIPT REQUESTED

Edmund Baker
Director
MHA Nation Environmental Department
edmundbaker@mhanation.com

Re: Inspection Report for Lakeview Aggregates, NPDES Permit No. NDR10I01I

Dear Mr. Baker:

On September 2, 2021, representatives of the U.S. Environmental Protection Agency inspected the Lakeview Aggregates facility located on the Fort Berthold Reservation in Four Bears, North Dakota to evaluate compliance with the stormwater construction permit requirements. The inspection was conducted under the authority of Section 308 of the Clean Water Act (Act). Enclosed is a report of the inspection.

Inspection findings are summarized within the enclosed inspection report in a table titled "Findings, Corrective Actions and Recommendations." Within **thirty (30) days** of receipt of this report, please provide the EPA with a summary of corrective actions taken to address each of the findings identified in the report and any information that may change the findings. This summary should be sent to:

Emilio Llamozas
EPA Region 8
Llamozas.emilio@epa.gov

Please contact me at 303-312-6407 or llamozas.emilio@epa.gov if you have any questions regarding this letter or the enclosed report.

Sincerely,

EMILIO LLAMOZAS

Digitally signed by EMILIO LLAMOZAS
Date: 2021.10.12 11:45:50 -06'00'

Emilio Llamozas
NPDES and Wetlands Enforcement Section
Enforcement and Compliance Assurance Division

Enclosures:

- 1) NPDES Stormwater Inspection Report – Construction
- 2) Photo Log

cc: The Honorable Mark Fox, Chairman, MHA Nation (via email)
Lisa Lone Fight, Senior Scientific Advisor, MHA Nation (via email)
Roger White Owl, Policy Advisor, Four Bears Segment (via email)
Lane Vocu, Energy Liaison, Four Bears Segment (via email)
Josh Cunningham, Water Quality Specialist, MHA Nation Environmental Department (via email)

NPDES Stormwater Inspection Report – Construction

National Database Information	
Inspection Date: September 2, 2021	Inspection Type: Stormwater Construction
Entry/Exit Time: 8:00 am / 11:15 am	NPDES ID Number: NDR10I01I
NAICS Code: 212321	Inspection ID: 202109_NDR10I01I
Lead inspector and affiliation: Emilio Llamozas, EPA Region 8	
Inspector and affiliation: Lisa-kay Prideaux, EPA Region 8	

Facility Location Information (Name/Location/ Mailing Address)	
Site/Facility Name & Location: Lakeview Aggregates 207 Highway 23 New Town, North Dakota 58763	Mail Report to: Edmund Baker MHA Nation Environmental Department edmundbaker@mhanation.com

Contact Information								
Facility Contacts: <i>(indicate primary lead and present during inspection)</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; padding: 5px;">Name(s)/Title</th> </tr> <tr> <td style="padding: 5px;">Edmund Baker / Director / MHA Nation Environmental Department / primary lead during the inspection</td> </tr> <tr> <td style="padding: 5px;">Lisa Lone Fight / Senior Scientific Advisor / MHA Nation Science Department / present during the inspection</td> </tr> <tr> <td style="padding: 5px;">Roger White Owl / Policy Advisor / Four Bears Segment / present during the inspection</td> </tr> <tr> <td style="padding: 5px;">Lane Vocu / Energy Liaison / Four Bears Segment / present during the opening conference</td> </tr> <tr> <td style="padding: 5px;">Josh Cunningham / Water Quality Specialist / MHA Nation Environmental Department / present during the inspection</td> </tr> <tr> <td style="padding: 5px;">Morgan Berquist / Science Tech / MHA Nation Science Department / present during the inspection</td> </tr> </table>	Name(s)/Title	Edmund Baker / Director / MHA Nation Environmental Department / primary lead during the inspection	Lisa Lone Fight / Senior Scientific Advisor / MHA Nation Science Department / present during the inspection	Roger White Owl / Policy Advisor / Four Bears Segment / present during the inspection	Lane Vocu / Energy Liaison / Four Bears Segment / present during the opening conference	Josh Cunningham / Water Quality Specialist / MHA Nation Environmental Department / present during the inspection	Morgan Berquist / Science Tech / MHA Nation Science Department / present during the inspection
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Josh Cunningham / Water Quality Specialist / MHA Nation Environmental Department / present during the inspection								
Morgan Berquist / Science Tech / MHA Nation Science Department / present during the inspection								
Person/Company meeting definition of “Operator”	Mandan Hidatsa Arikara Nation (MHA Nation)							
Authorized Official(s) (Per NOI or SWPPP?)	Scott Satermo / CEO MHA Nation							

Permit Information			
Is the permit on site and available? Yes		Date NOI Submitted: July 25, 2019	
Effective Date: August 8, 2019		Expiration Date: February 16, 2022	
Construction Start Date: The construction restoration of the facility began in August 2019.		Percent complete: Approximately 0%	Estimated Completion Date: unknown
Disturbed Area: 27.75 acres	Total Project Area: 27.75 acres	Latitude: 47.9824° N	Longitude: -102.5704° W
Receiving Water(s): Lake Sakakawea / Missouri River			
If applicable, is waiver certification & approval on file? Not applicable			
Regulatory Inspector’s source of information: The June 16, 2020 Administrative Order on Consent (CWA-08-2020-0015), last inspection report dated June 14, 2019, facility representatives, the SWPPP and facility maps, facility observations and the EPA NOI Database.			

Site Information							
Nature of Project	Residential	Commercial/Industrial	Roadway	Private	Federal	State/Municipal	<u>Other</u>
Construction Stage	Clearing/Grubbing	<u>Rough Grading</u>	Infrastructure	Building Const.	Final Grading	Final Stabilization	
Weather conditions during inspection (e.g., temperature, sky, precipitation): It rained during the night prior to the inspection and the morning of the inspection and then the weather was partly cloudy.							

Areas Evaluated During Inspection		
<u>Permit</u>	<u>Self-Monitoring Program</u>	Pretreatment
<u>Records</u>	Compliance Schedule	Pollution Prevention
<u>Facility Site Review</u>	Laboratory	<u>Stormwater</u>
<u>Effluent/Receiving Waters</u>	<u>Operations and Maintenance</u>	Combined Sewer Overflow
Flow Measurement	Sludge Handling/Disposal	Sanitary Sewer Overflow

Report Review and Signature		
Drafter Name	Address/Phone Number	Date
Emilio Llamozas	U.S. EPA Region 8 1595 Wynkoop Street 8ENF-W-NW Denver, Colorado 80202	10/05/2021
	303-312-6407	
Reviewer Name	Address/Phone Number	Date
Lisa-kay Prideaux	U.S. EPA Region 8 Helena Office 10 W 15 Street, Suite 3200 8-MO Helena, Montana 59626	10/06/2021
	406-457-5022	
Supervisor Signature/Name	Address/Phone Number	Date
MICHAEL BOEGLIN Digitally signed by MICHAEL BOEGLIN Date: 2021.10.10 23:14:48 -06'00'	U.S. EPA Region 8 1595 Wynkoop Street 8ENF-W-NW Denver, Colorado 80202	10/10/2021
	Michael Boeglin	

Inspection Narrative and Site Description

The inspection was conducted at the Lakeview Aggregates facility (the facility) to evaluate MHA Nation's compliance with the Construction General Permit (CGP). On September 2, 2021, at approximately 8:00 am, U.S. Environmental Protection Agency (EPA) inspectors Emilio Llamozas and Lisa-kay Prideaux (inspectors) arrived at the MHA TERO/Energy Complex Building. The inspection was announced a couple weeks prior to the inspection to coordinate logistics for the inspection. The inspectors met with Lisa Lone Fight, Senior Science Advisor for the MHA Nation, Morgan Berquist, Science Tech for the MHA Nation, Edmund Baker, Environmental Director for the MHA Nation, Josh Cunningham, Water Quality Specialist for MHA Nation, Roger White Owl, Policy Advisor for the Four Bears Segment, and Lane Vocu, Energy Liaison for the Four Bears Segment. Inspectors began with an opening conference by presenting their inspector credentials and explaining the purpose of the inspection. The inspectors had a copy of the Stormwater Pollution Prevention Plan (SWPPP) dated October 27, 2020. The inspectors asked if changes had been made to the SWPPP. The facility representatives indicated that no changes had been made to the SWPPP. The facility representatives indicated that they had a printed copy of the May 15, 2019, SWPPP, but did not have a copy of the October 27, 2020, SWPPP. EPA sent a copy of the October 27, 2020, SWPPP to the facility representatives listed above, via email on September 15, 2021. The inspectors did not review the SWPPP during the inspection because it had already been reviewed on October 27, 2020.

The facility is located on the Fort Berthold Reservation, addressed at 207 Highway 23, Four Bears, North Dakota, and comprises approximately 27.75 acres of disturbed land that was once used as a sand and gravel mine. The MHA Nation indicated that the sand and gravel facility began operations approximately in 2005 and ceased operations in 2017. The construction restoration project for this facility began in August 2019 when the facility obtained coverage under the construction general permit. The MHA Nation and the Four Bears Segment are working to develop a plan for the future use of the Lakeview Aggregates facility. The previous EPA inspection of the facility occurred on June 14, 2019. On July 25, 2019, the MHA Nation submitted a NOI for coverage under the construction general permit for the Lakeview Aggregates facility. The EPA entered into an Administrative Order on Consent (AOC) with the MHA Nation on June 16, 2020. The docket number for the AOC is CWA-08-2020-0015. The MHA Nation has been submitting the quarterly reports under the SWPPP, which include the self-inspection performed at the facility. The MHA Nation has submitted quarterly reports on the following dates: January 15, 2021, April 15, 2021 and July 15, 2021. The next quarterly report is due on October 15, 2021.

After the opening conference, the inspectors then proceeded to walk the facility with all of the facility representative listed above, except for Mr. Vocu because he had another meeting to attend. Throughout the inspection, the inspectors noted their observations in a checklist. Photographs taken during the inspection are included in the attached photo log. Stormwater Best Management Practices (BMPs) had been installed at the facility since the last inspection on June 14, 2019. There had been some rain overnight and it was raining at the beginning of the inspection. The facility slopes in a southeast direction towards Lake Sakakawea. The inspectors first observed the indoor storage area in the Frucon Building. There was one leaking oil barrel inside the Frucon Building without secondary containment (photo 62). There were also several containers inside the Frucon Building without secondary containment that appeared to be ready for disposal (photos 63 and 64). The inspectors also observed the boat assembly area (photo 65), an unidentified tote of an unknown substance on a trailer parked outside the Frucon Building (photo 66), and a new aggregate stockpile (photo 67) that was not there during the

previous EPA inspection. The inspectors then observed the entirety of the facility perimeter. The inspectors observed the northwest corner of the facility where concrete, asphalt and construction waste were kept (photo 68). There were some areas of the facility that had formed erosion rills and needed to be stabilized (photos 69, 71 and 75). The inspectors also observed the earthen berm on the eastern side of the facility (photos 70 and 72) and the rock spill way (photos 73 and 74). The silt fence installed after the rock spill way was in need of maintenance because the fence had slack areas and was torn. Natural vegetation had been established in several areas of the facility (photos 68, 70, 72, 73 and 75). There was also a steep area in the middle of the facility that was recently regraded to address the erosion rills that were forming (photos 76 and 77). This area needs additional BMPs to prevent future erosion. The top of the hill also had a small berm where water accumulates at the top of the slope (photo 78). The berm was in need of maintenance to contain the water from larger storm events. The inspectors then observed the SWPPP sign at the entrance of the facility (photo 79). Inspection findings and associated corrective actions are listed below.

The inspectors held a closing conference with Ms. Lone Fight, Ms. Berquist, Mr. Baker, Mr. Cunningham, and Mr. White Owl where they discussed preliminary findings. The inspection concluded when the inspectors left the facility at approximately 11:15 am. On September 15, 2021, the EPA sent an email to Mr. Baker, Mr. White Owl, Ms. Lone Fight, Mr. Vocu, Ms. Berquist and Mr. Cunningham with the preliminary findings from the inspection.

Findings, Corrective Actions and Recommendations

Finding #1: Currently, there is not a final plan for the future use of the Lakeview Aggregates facility. The MHA Nation and the Four Bears Segment are working together to develop a plan for the future use of the Lakeview Aggregates facility. Once, the future use of the facility is decided, the SWPPP should be updated with a description of the nature of the construction activities and a timeline for the construction of the new project.

Permit requirement:

Part 7.2.3.a of the 2017 Federal Stormwater Construction General Permit (permit) indicates that the SWPPP must include a description of the nature of construction activities.

Part 7.2.3.f of the permit indicates that the SWPPP must include the Nature of Construction Activities including, “A description and projected schedule for the following:

- i. Commencement of construction activities in each portion of the site, including clearing and grubbing, mass grading, demolition activities, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;
- ii. Temporary or permanent cessation of construction activities in each portion of the site;
- iii. Temporary or final stabilization of exposed areas for each portion of the site; and
- iv. Removal of temporary stormwater controls and construction equipment or vehicles, and the cessation of construction-related pollutant-generating activities.”

Corrective Actions:

Update the SWPPP with the final plan for future use of the Lakeview Aggregates facility along with a timeline for the construction of the future facility. Provide a description of the corrective actions taken to address this finding.

Finding #2: The SWPPP and facility map had not been updated with new activities occurring at the facility since the October 27, 2020 SWPPP.

The MHA Nation Environmental Department had a printed copy of the Lakeview Aggregates May 15, 2019, SWPPP, which is not the latest version of the SWPPP. The MHA Nation made some updates to the SWPPP on October 27, 2020, but it had not printed them out yet. On September 15, 2021, the EPA provided a digital copy of the October 27, 2020 SWPPP to the facility representatives listed in the Inspection Narrative and Site Description section above.

During the inspection the inspectors identified several activities that were not incorporated into the SWPPP and facility map. The activities not identified in the SWPPP and facility map include:

- 1- There was a boat assembly occurring at the facility (photo 65). The MHA Nation had notified the EPA of this activity; however, the boat assembly activity was not added to the SWPPP and facility map. The boat assembly activity needs to be included in the SWPPP and facility map.
- 2- There was also an unidentified tote on a trailer parked outside the Frucon Building (photo 66). This activity needs to be included in the SWPPP and facility map.
- 3- There was a new stockpile of aggregate in the middle upper section of the facility that did not have best management practices (BMPs) (photo 67). This activity needs to be included in the SWPPP and facility map.
- 4- There was one leaking oil barrel inside the Frucon Building without secondary containment (photo 62). This barrel needs to have secondary containment. There were several containers inside the Frucon Building without secondary containment that appeared to be ready for disposal (photos 63 and 64). These containers should be disposed offsite at appropriate disposal facilities. These activities need to be included in the SWPPP and facility map.

Permit requirement:

Part 7.4 of the permit states, "You must modify your SWPPP, including the site map(s), within seven (7) days of any of the following conditions:

- a. Whenever new operators become active in construction activities on your site, or you make changes to your construction plans, stormwater controls, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5. You do not need to modify your SWPPP if the estimated dates in Part 7.2.3.f change during the course of construction;
- b. To reflect areas on your site map where operational control has been transferred (and the date of transfer) since initiating permit coverage;
- c. If inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with this permit;
- d. Where EPA determines it is necessary to install and/or implement additional controls at your site in order to meet the requirements of this permit, the following must be included in your SWPPP:
 - i. A copy of any correspondence describing such measures and requirements; and
 - ii. A description of the controls that will be used to meet such requirements.

- e. To reflect any revisions to applicable federal, state, tribal, or local requirements that affect the stormwater controls implemented at the site; and
- f. If applicable, if a change in chemical treatment systems or chemically enhanced stormwater control is made, including use of a different treatment chemical, different dosage rate, or different area of application.

7.4.2 You must maintain records showing the dates of all SWPPP modifications. The records must include the name of the person authorizing each change (see Part 7.2.10 above) and a brief summary of all changes.

7.4.3 All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix I, Part I.11.b.

7.4.4 Upon determining that a modification to your SWPPP is required, if there are multiple operators covered under this permit, you must immediately notify any operators who may be impacted by the change to the SWPPP.”

Corrective Action:

Update the October 27, 2020, SWPPP and facility map with the following activities:

- a. Boat assembly;
- b. Unidentified tote of a trailer parked outside the Frucon Building;
- c. New stockpile of aggregate; and
- d. Waste containers in the Frucon Building.

Provide an updated copy of the SWPPP to the EPA. Provide a description of the corrective actions taken to address this finding.

Finding #3: There was a new aggregate stockpile at the facility with no stormwater controls.

There was a new stockpile of aggregate in the middle upper section of the facility that did not have best management practices (BMPs) (photo 67) on the downgradient perimeter area.

Permit requirement:

Part 2.2.5 of the permit states, “Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil:

- a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any stormwater conveyances, drain inlets, and areas where stormwater flow is concentrated;
- b. Install a sediment barrier along all downgradient perimeter areas;
- c. For piles that will be unused for 14 or more days, provide cover or appropriate temporary stabilization (consistent with Part 2.2.14);
- d. You are prohibited from hosing down or sweeping soil or sediment accumulated on pavement or other impervious surfaces into any stormwater conveyance, storm drain inlet, or water of the U.S.”

Corrective Action:

Install a sediment barrier along all stockpile’s downgradient perimeter areas and provide appropriate stabilization as required in Part 2.2.14 of the permit. Provide photos of the BMPs and a description of the corrective actions taken to address this finding.

Finding #4: There was erosion that had formed into rills on the north section of the facility near the gravel road.

The northeast section of the facility near the gravel road on the north side had some erosion that had formed into rills (photos 69 and 75). This area of the facility needs to be stabilized, but attention should be made to preserve the natural vegetation in the area.

Permit requirement:

Part 2.2.14 of the permit states, “Implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, gravel) that minimize erosion from exposed portions of the site in accordance with Parts 2.2.14a and 2.2.14b.”

Part 2.2.14(b) of the permit states, “Final Stabilization Criteria (for any areas not covered by permanent structures):

- i. Establish uniform, perennial vegetation (i.e., evenly distributed, without large bare areas) that provides 70 percent or more of the cover that is provided by vegetation native to local undisturbed areas; and/or
- ii. Implement permanent non-vegetative stabilization measures to provide effective cover.”

Corrective Action:

Implement and maintain stabilization measures that minimize erosion from exposed portions of the facility. Provide photos of the north area of the facility by the gravel road once it is stabilized and a description of the corrective actions taken to address this finding.

Finding #5: There was an area in the middle of the facility that needed additional BMPs to prevent future erosion.

There was a steep slope in the middle of the facility that was recently regraded to repair the erosion rills (photos 76 and 77). The facility self-inspection report photos had indicated that this was an area of the facility that experiences erosion due to the steep slope of the area. This area appears to need additional BMPs to slow the speed of the stormwater flowing down the hill. The top of the hill also had a small berm where water accumulates at the top of the slope (photo 78). The berm was in need of maintenance to contain the water from larger storm events.

Permit requirement:

Part 2.1 of the permit states, “You must design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 to minimize the discharge of pollutants in stormwater from construction activities.”

Part 2.2.14 of the permit states, “Implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blankets, hydromulch, gravel) that minimize erosion from exposed portions of the site in accordance with Parts 2.2.14a and 2.2.14b.”

Part 2.2.14(b) of the permit states, “Final Stabilization Criteria (for any areas not covered by permanent structures):

- i. Establish uniform, perennial vegetation (i.e., evenly distributed, without large bare areas) that provides 70 percent or more of the cover that is provided by vegetation native to local undisturbed areas; and/or

- ii. Implement permanent non-vegetative stabilization measures to provide effective cover.”

Corrective Action:

Design, install, and maintain stormwater controls for the steep slope in the middle of the facility required in Parts 2.2 and 2.3 of the permit to minimize the discharge of pollutants in stormwater from construction activities. Provide photos of the BMPs installed in the steep slope in the middle of the facility and a description of the corrective actions taken to address this finding.

Finding #6: There was one leaking oil barrel without secondary containment in the Frucon Building and several containers and totes in the Frucon Building that needed to be disposed of in compliance with federal, state, tribal, and local requirements.

1. There was one leaking oil barrel inside the Frucon Building without secondary containment (photo 62). This barrel needs to have secondary containment.
2. There were several containers inside the Frucon Building without secondary containment that appeared to be ready for disposal (photos 63 and 64). These containers should be disposed offsite at appropriate disposal facilities.

Permit requirement:

Part 2.3.3(c) of the permit states, “For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:

- i. Store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting, temporary roofs) to minimize the exposure of these containers to precipitation and to stormwater, or (2) a similarly effective means designed to minimize the discharge of pollutants from these areas (e.g., having a spill kit available on site and ensuring personnel are available to respond expeditiously in the event of a leak or spill), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
- ii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. You are prohibited from hosing the area down to clean surfaces or spills. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.”

Part 2.3.3(d)(iv) of the permit states, “Dispose of hazardous or toxic waste in accordance with the manufacturer’s recommended method of disposal and in compliance with federal, state, tribal, and local requirements...”

Corrective Action:

Provide secondary containment for the leaking oil barrel. Dispose of hazardous or toxic waste in accordance with the manufacturer’s recommended method of disposal and in compliance with federal, state, tribal, and local requirements. Provide photos of the secondary containment for the leaking oil barrel and photos of the removed containers from the Frucon Building. Also, provide a description of the corrective actions taken to address this finding.

Finding #7: The silt fence at the southeast corner of the facility by the rock spillway was in need of maintenance.

The silt fence installed after the rock spillway between the facility and Lake Sakakawea (photos 73 and 74) was in need of maintenance because the fence had slack areas and was torn.

Permit requirement:

Part 2.1 of the permit states, “You must design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 to minimize the discharge of pollutants in stormwater from construction activities.”

Part 2.1.4 of the permit states, “Ensure that all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

- a. Comply with any specific maintenance requirements for the stormwater controls listed in this permit, as well as any recommended by the manufacturer.
- b. If at any time you find that a stormwater control needs routine maintenance, you must immediately initiate the needed maintenance work, and complete such work by the close of the next business day.
- c. If at any time you find that a stormwater control needs repair or replacement, you must comply with the corrective action requirements in Part 5.”

Corrective Action:

Perform maintenance on the silt fence on the southeast section of the facility by the rock spillway to minimize the discharge of pollutants in stormwater from construction activities. Provide photos of the maintained silt fence and a description of the corrective actions taken to address this finding.