



REGION 1

BOSTON, MA 02109

March 6, 2024

Mr. Jamison VanDyke
1226 NH Route 119; Unit 7
Rindge, New Hampshire 03461
jbvandyke@formupfoundations.com

Dear Mr. VanDyke:

On January 5th, 2024, and February 12th, 2024, the U.S. Environmental Protection Agency performed inspections at the Murray Road Residential Development ("Development") in Ashburnham, Massachusetts regarding compliance with the National Pollutant Discharge Elimination System program of the Clean Water Act. A copy of the inspection report is enclosed with this letter. Provide responses to each numbered item below regarding the Development within 30 days of receipt of this letter to Damian Bednarz at bednarz.damian@epa.gov.

1. Identify to the EPA all operators and developing company names for this Development. An operator is defined by the EPA as parties that hold operational control over construction plans and specification, their modifications, as well as day-to-day operational control of construction Activity. Subcontractors are generally not considered operators for EPA purposes. This development may have multiple operators, including but not limited to the owner of the property as well the developing company in charge of the construction activity.
2. Part 7 of the 2022 Construction General Permit ("CGP") requires all operators associated with a construction site to create a Storm Water Pollution Prevention Plan ("SWPPP"). Submit the SWPPP associated with the Murray Road Development. The SWPPP must include all items listed in Part 7 of the CGP, including all items in Sections 7.2.1 through 7.2.11.
3. As noted via email to you from Mr. Bednarz on January 23, 2024, Section 2.1.3 of the CGP requires stormwater controls to be installed before each phase of construction activity. Provide photos of the implementation of downgradient sediment controls from each Lot of the site where earth-disturbing activity has been conducted at the Development. Section 2.2.3 requires sediment control measures to be installed along any perimeter areas of the site that are downslope from any exposed soil or disturbed area. Note that Section 2.1.4 also requires that operators ensure all stormwater controls are maintained and remain in effective operating condition during permit coverage and require immediate upkeep and maintenance when their effectiveness is reduced.
4. Where there exist a Water of the U.S. on site, such as the two streams that flow through the Development and wetland areas on site Section 2.2.1 of the CGP requires a 50-foot undisturbed

natural buffer around all waters. If infeasible to provide and maintain an undisturbed natural buffer of any size, a compliance alternative is to implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer. Provide a solution you intend to implement regarding this permit requirement.

5. Part 4 of the CGP requires the operator to conduct regular stormwater inspections, either at least once every 7 calendar days, or every 14 calendar days and within 24 hours of a storm event that produces 0.25 inches or more of rain within a 24-hour period. The inspections must include all items outlined in Section 4.5 of the CGP. Provide copies of all documents memorializing past stormwater inspections conducted at the Development by construction operators. In addition, provide copies of all future inspection reports that completed under the requirements of the CGP to Mr. Bednarz of the EPA and to the Town of Ashburnham Conservation Commission representatives at kguertin@ashburnham-ma.gov and cpicone01430@gmail.com at a monthly submission frequency for the next 12 months.
6. The Development's Notice of Intent identifies Point Source outfalls¹ 001 through 007 as on-site Rain Gardens, and outfall 008 as an on-site detention basin. An outfall is considered to be the location where the stormwater discharges enter a Water of the U.S. or town owned stormwater infrastructure. The outfalls at the Development include discharges to a roadside swale on the shoulder of Murray Road in addition to discharges to two streams that run through the site. Submit a change NOI to accurately identify all outfalls on the Development site that discharge into the roadside swale, and into the two streams.
7. Utilizing EPA's Stormwater Discharge Mapping Tools, it was found that discharges that enter the roadside swale ultimately discharges to Whitman River, which is 303(d) listed. Submit in your change NOI the indication that discharges from the Development are conveyed to the Whitman River and indicate on the NOI that a receiving water is 303(d) listed.
8. The EPA's observations during the February 12th inspection, along with publicly available GIS data, confirm the presence of wetlands and tributaries subject to the requirements of the CWA on the Site. This information further indicates that jurisdictional wetlands on the Site have been cleared, stumped, grubbed, and filled and that rock fill material has been placed in the tributaries. The CWA makes it unlawful to discharge pollutants, including soil, sand, rocks and/or other dredged or fill material, into waters of the United States, including covered wetlands and tributaries, except as authorized by, among other things, a permit issued by the Corps under Section 404, 33 U.S.C. § 1344. The rock check dams and other fill materials observed within the tributaries are violations, and continue to be violations until all fill material is removed and the tributaries and adjacent impacted wetlands are restored. EPA strongly encourages you to work with the Conservation Commission to resolve these violations. Failure to do so may subject you to a federal enforcement action under Section 309 of the CWA, 33 U.C. § 1319, which authorizes EPA to seek full restoration of impacted jurisdictional wetlands and tributaries as well as civil penalties.

¹ The 2022 CGP defines a Point Source as any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

If you have questions regarding this letter, please contact Damian Bednarz of my staff at 617-918-1482 or at bednarz.damian@epa.gov. Legal issues may be directed to Jeff Kopf, Senior Enforcement Counsel, at 617-918-1796 or at kopf.jeff@epa.gov.

Sincerely,

**NEWTON
TEDDER**

Digitally signed by
NEWTON TEDDER
Date: 2024.03.06
14:44:22 -05'00'

Newton Tedder

Acting Manager, Water Compliance Section 1

ENCLOSURES

1. Inspection Report for January 5th, 2024, EPA Inspection
2. Inspection Report for February 12th, 2024, EPA Inspection
3. Photo Album for January 5th, 2024, and February 12th, EPA Inspections

cc: Tom Harvey, Operator – tom.harvey.nh@gmail.com

Josh Joslyn, Graz engineering - josh@grazengineering.com

Chris Picone, Ashburnham Conservation Commission - cpicone01430@gmail.com

Catherine Laramie, Ashburnham Conservation Commission - crlaramie@comcast.net

Katie Guertin, Ashburnham Conservation Commission - kguertin@ashburnham-ma.gov

Mia McDonald, Massachusetts Department of Environmental Protection -
mia.mcdonald@mass.gov

Kim Roth, Massachusetts Department of Environmental Protection – Kimberly.roth@mass.gov



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 - National Pollutant Discharge Elimination System
20 Murray Road Residential Development

From: Damian Bednarz, EPA Inspector **DAMIAN BEDNARZ** Digitally signed by DAMIAN
BEDNARZ
Date: 2024.03.03 14:35:29 -05'00'

Thru: Andrew Spejewski, EPA Inspector

To: File

I. Facility Information

- A. *Facility Name:* Murray Road Residential Development
- B. *Facility Location:* 20 Murray Road
Ashburnham, MA 04130
- C. *Facility Contacts:* Jamison Vandyke, Operator
jbvandyke@formupfoundations.com
Josh Joslyn, Engineer in Training, Graz Engineering LLC
josh@grazengineering.com
- D. *NPDES ID No(s):* MAR1004ZS

II. Background Information

- A. *Date(s) of inspection:* January 5th, 2024
- B. *Weather Conditions:* Light cloud cover, approximately 25°F
- C. *US EPA Representative(s):*
Damian Bednarz, EPA Inspector
Ray Putnam, EPA Inspector
- D. *State/Local Representative(s):*
Chris Picone, Ashburnham Conservation Commission
Catherine Laramie, Ashburnham Conservation Commission

E. Federally Enforceable Requirements Covered During the Inspection:

National Pollutant Discharge Elimination System Construction General Permit
Effective February 17th, 2022

F. Previous Enforcement Actions:

No previous enforcement actions by the EPA.

III. Type and Purpose of Inspection

On January 5th, 2024, the U.S. Environmental Protection Agency conducted a compliance evaluation inspection of a residential construction project regarding applicability under the National Pollutant Discharge Elimination System's Construction General Permit for stormwater discharges associated with construction activities. The inspection was announced by the local Ashburnham Conservation Commission at an earlier unknown date.

IV. Facility Description

The Murray Road Residential Development in Ashburnham, Massachusetts, referred to hereafter as the "Site" or the "Development", is an ongoing residential construction project that began earth-disturbing construction activity since at least October of 2023. The Development consists of seven single family homes, each identified in predetermined lots (Lots 1-7). Each lot within this Development borders Murray Road. The lots generally slope down to the east towards Murray Road, where elevation continues to decrease in the eastern direction, with the highest local points being the most southwestern portions of the Development. There is a drainage swale on the west side of Murray Road that flows north, where waters enter stormwater infrastructure before flowing east towards the Whitmanville Reservoir and Whitman River. According to Development engineering schematics and observations taken during inspections, there exist four stormwater culverts along this length of Murray Road which previously served water crossings traveling eastwards and flows that enter a swale shouldering the road. Additionally, a wetlands delineation was conducted during early stages of the construction project in the shape of a wide "U". These features, as well as flow paths observed during the day of the inspection, can be found in slide 1 of the attached photo album. The area of this Development is approximately six acres.

V. Inspection

A. Opening Conference

I arrived at Murray Road in Ashburnham, Massachusetts at approximately 10 a.m. on January 5th, 2024, as the last to arrive to the group which consisted of Mr. Picone, Ms. Laramie, Mr. Joslyn, and Mr. Vandyke. After introductions and an exchange of contact information, I presented my inspector credentials and explained that the purpose of the inspection was to determine the Development's applicability to the EPA's 2022 Construction General Permit. I asked Mr. VanDyke whether his construction operation had obtained coverage under the permit, as I was previously unable to locate a Notice of

Intent in the EPA's data systems. Mr. VanDyke said that he had coverage, and I then asked him to produce the Notice of Intent and Storm Water Pollution Prevention Plan associated with this permit. Mr. VanDyke went to retrieve the documents and came back with a packet of printed out papers and flipped through them until landing on the first page of a copy of the Construction General Permit. I explained to him that this was a copy of the EPA's outlined permit requirements and did not indicate that the Development is covered under the permit and has obtained a permit identification number. He explained that he would continue to search for these documents post inspection.

I asked Mr. VanDyke when earth-disturbing activity began and what the scope of the Development was. Mr. VanDyke explained that land alterations began sometime in October of 2023 and that they intend to construct seven residential homes. Mr. VanDyke explained that work is being done on weekdays and sometimes weekends should the need arise. I asked how many workers are involved with the site on a regular basis, and he said only two, but more workers are contracted for specific jobs during certain stages of work. Each projected home has an associated lot with Lot 1 being the most northern lot, and Lot 7 being the most southern (slide 1).

Mr. VanDyke said that the site is challenging to work with considering a high-water table and large flows that come from the back of the property as well as from the Delphi Solar Field which neighbors the Development. In addition, there exist two streams, identified as intermittent streams, that pass through the Development affecting Lots 1-3 (slide 1).

Upon my return to the office after this inspection, I attempted to find a permit number for the Development. I found that a NOI was filed on the day of the inspection, January 5, 2024 at 2:21 p.m. with permit number MAR1004ZS.

B. Facility Tour

The group initially had met in front of Lots 4 and 5, in front of a wide "U" shaped stretch of silt fencing and silt socks (slides 3-4). Mr. Picone explained that this area was delineated sometime between late October to early November as a protected wetland after land alterations had already begun. This delineation late into the project caused Development operations to begin remediation efforts including but not limited to area stabilization, reintroduction of native topsoil within the impacted area, and the installation of stormwater control measures as ordered by the Town of Ashburnham. As a result of this delineation, construction plans needed revision to navigate this wetland and its buffer zone. Due to the shape of the silt fencing, flow from uphill of Lots 4 and 5 collects along the outside of the fencing and first feeds into the swale on the east side of Murray Road before being discharged via Culvert 4 (slides 1, 5-6).

At this location, Mr. VanDyke explained to me that the swale shouldering Murray Road was designed for low flow volumes and is currently overwhelmed by water that is sourced outside of the area of operation. He further mentioned that he frequently, and almost daily, maintains this swale to allow flow access to culverts in efforts to prevent water from bypassing culverts and flooding into the road. Mr. VanDyke installed check

dams within the swales to slow flows from south of the Development within the preexisting swale. Corrugated pipes of approximately 2' in width (slide 20) were installed underneath new driveways to maintain the functionality of the previously existing swale and culverts. I observed one such driveway with a top layer of riprap that had accumulated sediment to the point that the layer was hardly visible (slide 7). I mentioned that the riprap needs to be regularly maintained to ensure its effectiveness at preventing sediment from escaping the Development, and Mr. VanDyke assured that this would be done soon.

I observed riprap placed on both shoulders of Murray Road to contain larger flows within the swale, as well as sediment deposition in the roadway (slides 3-6). Mr. VanDyke mentioned that the local Department of Public Works collaborates with him to correct drainage issues. This work is ongoing, and corrections include lengthening and widening of the shoulder swale and eventual implementation of additional drains.

I asked Mr. VanDyke to identify those locations where contributing flows from outside the development are sourced. Mr. VanDyke and Mr. Joslyn explained that large flow volumes emerge from the west, necessitating the installation of a swale that stretches for approximately 700 feet along the back of the Development (slide 1, 8). This redirected water into a sedimentation basin (slide 10) beside Lot 7. I observed sediment accumulation within the basin (slide 11) and mentioned to Mr. VanDyke that it should be monitored and maintained so that sediment does not over-accumulate and lessen the effectiveness of the basin at containing sediment. The basin has an approximately 10" elevated outlet surrounded by riprap (slide 13) that carries still water into the swale shouldering Murray Road (slide 14). I observed the wall of the sedimentation basin to be unstabilized and mentioned to Mr. VanDyke that this could cause sediment to run off into the swale. I suggested that common perimeter controls, such as silt fences or silt socks, can help mitigate sediment from entering the swale. Further south along Murray Road, Mr. Joslyn led me to the source of flow discharging from the Delphi Solar Farm into the swale. Mr. Joslyn explained that the solar farm was constructed about 10 years ago and has since then caused the area stormwater drainage challenges. The solar field can be seen on aerial imagery (slide 1) and on the western perimeter of the Development (slide 9). I observed three corrugated pipes of an approximate width of 2' with sediment caught in its ribs (slide 16) and one approximately 3" pipe (slide 18) protruding from the solar field. Mr. Joslyn explained that during a storm event, this smaller pipe produces a high-volume flow that enters the roadside swale.

While returning to the northern side of the development, I observed a shallow stretch of the swale that shoulders Murray Road (slide 22) that showed signs of escaped flow at the front of Lot 3. Riprap was present along both sides of the swale, similar to the front of Lots 4 and 5. On the other side of the silt fencing, I observed larger rocks mixed in with riprap within the intermittent stream (slide 24). The flow sourced from this stream pools in this area and flows into culvert 3. The water had a red hue to it, and foam was present on the other side of the culvert (slides 25-26). I observed deposited sediment along the banks of the channel.

The driveway to Lot 2 had accumulated sediment over the layer of riprap such that the crushed rock was not visible, and I repeated the need for maintenance to Mr. VanDyke (slide 27).

At the northern edge of Lot 1, I observed a concentrated flow with various sized stones obstructing it (slide 30). Flow here proceeds through straw wattles, mulch, and stone, before discharging through Culvert 1 under Murray Road. At the other end of Culvert 1, I observed deposited sediment along the banks of the channel (slides 31, 32).

C. Records Review

There were no records to be reviewed.

D. Closing Conference

On the street in front of Lot 1, I explained to Mr. VanDyke and Mr. Picone that I would submit a report, detailing my observations from this inspection, within 70 calendar days. I explained further that this report would be sent concurrently alongside photos and a cover letter which might request further information relevant to the EPA. Speaking to Mr. VanDyke, I explained that the extent of the Development and presently disturbed area seemed to clearly have a footprint of over an acre. I further explained that the Development is subject to the EPA's Construction General Permit and that I would attempt to search for permit coverage upon my return to the office.

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.



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 - National Pollutant Discharge Elimination System
Murray Road Residential Development

From: Damian Bednarz, EPA Inspector **DAMIAN BEDNARZ**

Thru: Andrew Spejewski, EPA Inspector

To: File

Digitally signed by DAMIAN
BEDNARZ
Date: 2024.03.03 14:34:49 -05'00'

I. Facility Information

- A. *Facility Name:* 20 Murray Road Residential Development
- B. *Facility Location:* 20 Murray Road
Ashburnham, MA 01430
- C. *Facility Contacts:* Jamison Vandyke, Operator
jbvandyke@formupfoundations.com
Tom Harvey, Operator
Tom.harvey.nh@gmail.com
Josh Joslyn, Engineer in Training, Graz Engineering LLC
josh@grazengineering.com
- D. *NPDES ID No(s):* MAR1004ZS

II. Background Information

- A. *Date(s) of inspection:* February 12th, 2024
- B. *Weather Conditions:* Mostly clear sky, approximately 35°F
- C. *US EPA Representative(s):*
Damian Bednarz, EPA Inspector
Ray Putnam, EPA Inspector
- D. *State/Local Representative(s):*
Chris Picone, Ashburnham Conservation Commission
Catherine Laramie, Ashburnham Conservation Commission

Katie Guertin, Ashburnham Conservation Commission
Mia McDonald, Massachusetts Department of Environmental Protection
Kim Roth, Massachusetts Department of Environmental Protection

E. Federally Enforceable Requirements Covered During the Inspection:

National Pollutant Discharge Elimination System Construction General Permit
Effective February 17th, 2022

F. Previous Enforcement Actions:

No previous enforcement action by the EPA.

III. Type and Purpose of Inspection

On February 12th, 2024, the EPA conducted an additional compliance evaluation inspection after the filing of a Notice of Intent to discharge stormwater by operator Jamison VanDyke on January 5th, 2024. This inspection's purpose was to determine compliance regarding conditions and requirements set within the Construction General Permit. This inspection, and the EPA's involvement, was announced to the Development on February 2nd, 2024, via email.

IV. Facility Description

The Murray Road Residential Development in Ashburnham, Massachusetts, referred to hereafter as the "Site" or the "Development", is an ongoing residential construction project that began earth-disturbing construction activity since at least October of 2023. The Development consists of seven single family homes, each identified in predetermined lots (Lots 1-7). Each lot within this Development borders Murray Road. The lots generally slope down to the east towards Murray Road, where elevation continues to decrease in the eastern direction, with the highest local points being the most southwestern portions of the Development. There is a drainage swale on the west side of Murray Road that flows north, where waters enter stormwater infrastructure before flowing east towards the Whitmanville Reservoir and Whitman River. According to Development engineering schematics and observations taken during inspections, there exist four stormwater culverts along this length of Murray Road which previously served water crossings traveling eastwards and flows that enter a swale shouldering the road. Additionally, a wetlands delineation was conducted during early stages of the construction project in the shape of a wide "U". These features, as well as flow paths observed during the day of the inspection, can be found in slide 1 of the attached photo album. The area of this Development is approximately six acres.

V. Inspection

A. Opening Conference

Mr. Putnam of the EPA and I arrived at Murray Road at approximately 10 a.m. by prior arrangement. Present at the site at my arrival was Mr. Picone, Ms. Guertin, Ms. Laramie, Ms. McDonald, Ms. Roth, and Mr. Joslyn. Mr. Joslyn explained that an operator of the Development, Mr. Harvey, was to meet with the group soon and that Mr. VanDyke was unavailable to attend this inspection. Approximately 15 minutes later, Mr. Harvey arrived, and the group reintroduced themselves to him.

Mr. Putnam and I presented our credentials and explained the purpose of our inspection, which was a follow-up to a previous visit and to conduct compliance assessments regarding the EPA's Construction General Permit. I asked Mr. Harvey whether he was an operator with control over work at the Development. He stated that he was, and that Mr. VanDyke was the owner as well as an operator.

B. Facility Tour

The group initially met in front of Lot 2, which featured a recently erected home (slide 33) and a semicircle of crushed stone containing a foundation pipe that feeds into Culvert 2 (slide 34). The flows emanating from Culvert 2 were laden with sediment, and deposition was observed for approximately 100 feet outside of the culvert, heading downhill to the east (slide 35). At some point, Mr. Joslyn explained that this culvert previously served flows sourcing from a previously existing logging road.

In efforts to minimize stormwater overflow from the Development onto Murray Road, several blockages, consisting of both large and small rocks, were installed at two stream crossing locations near culvert openings. The group made their way over to Culvert 1 and the stream leading into it (slide 36). The control measures within the stream crossing area are consistent with what I had observed in early January of 2024, which featured a laid mulch layer, staked-in silt socks, and a riprap berm that slows incoming flows. Since January, the Development has installed a dirt channel to convey stormwaters around the mulch layer placed on top of unstabilized area (slide 38-40). Ms. McDonald expressed that control measures should not exist within this area and its 50-foot buffer zone, and that this area should have been untouched by the Development. Mr. Putnam agreed with this statement and mentioned the rock fill ought to be removed. Mr. Picone expressed that the immediate removal of rock fill and other stormwater control measures might have unanticipated consequences such as the inundation of Murray Road and increased pollution risk due to the unstabilized state of this portion of the site, but ultimately agreed that at some point during the project that these control measures need to be removed. Reading verbatim from a copy of the Construction General Permit, I stated at that there is a related permit condition, Part 2.2.1, which requires construction planning to consider and retain a 50-foot buffer zone.

Mr. Putnam suggested that the diverted flow could be instead diverted to Culvert 2, rather than through the stream crossing underneath Murray Road at Culvert 1.

The group proceeded to observe the second stream crossing at Culvert 3, which did not display any significant changes from my last inspection in early January of 2024. I observed a wall of riprap composed of both small and large rocks at the stream crossing with undisturbed area where the flow emerges. Ms. McDonald quickly reiterated concerns with blockages within and around the intermittent stream buffer zone.

I observed accumulated sediment within the swale shouldering Murray Road (slide 43) in front of Lot 4. At the time of the inspection, I observed newly cleared areas at Lot 5 since my last inspection (slide 44). The riprap driveway at this location appeared to have been recently maintained.

C. Records Review

There were no records to be reviewed.

D. Closing Conference

I explained to the group and Mr. Harvey that I would submit my report detailing observations made on this inspection in addition to the January inspection within 70 calendar days of my initial visit. I further explained that now that the Development had submitted a Notice of Intent to the EPA, that they are obligated to meet permit conditions outlined in the Construction General Permit, which can be found online. I mentioned that perimeter controls need to be installed in all perimeter areas downgradient of where unstabilized areas exist, and that the main objective of the permit is to prevent washout of sediment via stormwater. I also mentioned that inspections, conducted in a frequency as specified in the permit, need to commence in addition to documentation of these stormwater inspections. Mr. Harvey expressed at this time that the Development had already spent an undesirable amount of money in efforts to control stormwater and contain pollution.

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.