



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Report Title: Clean Water Act Compliance Inspection Report
Inspection Date(s): 05/24/2021
Regulatory Program(s): National Pollutant Discharge Elimination System (NPDES)
Type of Activity: Construction Stormwater
Site/Facility Name: Outer Banks – North and South
Permittee(s): Schell Outer Banks, LLC
Site/Facility Operator: Schell Outer Banks, LLC
Site/Facility Address: Jimtown Road and Robinsonville Road
Lewes, DE 19958
Latitude: 38.728168
Longitude: -75.183331
County/Parish: Sussex
General Permit Number: DE0051268
Site Specific Permit No.: DEC006300
NAICS Code: 236115
SIC: 1521
Unique Project #: 3E21WN126A

Site/Facility Representative(s): **Point of Contact**

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List of Attachments

Attachment A: DE NPDES Construction General Permit DE0051268

Attachment B: Photograph Log

Attachment C: Notice of Intent (NOI)

Attachment D: Approved Sediment and Stormwater Management Plans

Attachment E: Schell Outer Banks Response Photos

I. Introduction

On May 24, 2021, an inspection team composed of staff from the U.S. Environmental Protection Agency (“EPA”) Region III (hereinafter, “EPA Inspection Team”) conducted a Stormwater Inspection of the Outer Banks – North and South site (hereinafter, “the site”). The purpose of the inspection was to observe compliance with the Clean Water Act (CWA) and to verify compliance with the site’s National Pollutant Discharge Elimination System (NPDES) Permit No. DE0051268 Site Specific No. DEC006300 (hereinafter, the “Permit”) and applicable State and Federal regulations.

A. Inspection Opening Conference

The EPA Inspection Team arrived at the site at est. 1:30 PM for the inspection. Inspectors met with the following site representatives:

Table 1: Inspection Attendee List

Name	Affiliation	Telephone	Email
EPA Region III Inspectors and Contractors			
Peter Gold	EPA Region III	(215) 814-5236	Gold.Peter@epa.gov
Amanda Pruzinsky	EPA Region III	(215) 814-5456	Pruzinsky.Amanda@epa.gov
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Site/Facility Representatives			
Beau Croll	Schell Brothers	(302) 515-4341	Beau.croll@schellbrothers.com
Kelly Horsey	Horsey Construction	(302) 519- 1812	Horsey9420@gmail.com
State or County Representatives			
Jessica Watson	Sussex Conservation	(302) 381-6136	Jessica.Watson@sussexconservation.org

Peter Gold and Amanda Pruzinsky displayed their credentials to Beau Croll at the outset of the inspection, and explained the purpose of the inspection was to observe the site compliance with its Permit. A copy of the Permit is provided in Attachment A. The EPA Inspection Team informed Beau Croll that any information that the Facility deemed to be confidential business information (“CBI”) should be identified to EPA representatives during the inspection and it would be handled as CBI according to EPA’s CBI procedures.

B. Weather and Precipitation Conditions

During the inspection, weather was overcast with sporadic rain. National Oceanic and Atmospheric Administration (NOAA) National Weather Service precipitation data for the date of the inspection and 5 days prior are provided in the Table 2 below:

Table 2. Precipitation Data

Station Name	Date	Precipitation Amount (inches) ¹
Lewes 2.4 SSE, DE US US1 DESS0047	05/19/2021	0.0
Lewes 2.4 SSE, DE US US1 DESS0047	05/20/2021	0.0
Lewes 2.4 SSE, DE US US1 DESS0047	05/21/2021	0.0
Lewes 2.4 SSE, DE US US1 DESS0047	05/22/2021	0.0
Lewes 2.4 SSE, DE US US1 DESS0047	05/23/2021	0.0
Lewes 2.4 SSE, DE US US1 DESS0047	05/24/2021	0.0

C. Summary of the Site/Facility

The total area of the site is 32.6 acres with 22.6 acres being identified for disturbance. The site is being developed into a residential housing development.

II. Site/Facility Activity

During the inspection, the EPA Inspection Team inspected the active construction part of the site. The inspection observations were made pursuant to the requirements of the Permit. The observations from the inspection are described in detail below in the Observations section. Photographs were taken during the inspection by Amanda Pruzinsky and are provided in Attachment B.

III. Observations

The following section summarized the EPA Inspection Team's observations relative to the Permit requirements and approved Sediment & Stormwater Management Plans. The permittee obtained NPDES permit coverage under the General Permit DE0051268 on October 6, 2020 (Attachment C - NOI).

The NPDES permit (DE NPDES Construction General Permit), section D. EFFLUENT LIMITATIONS establishes requirements for managing runoff from construction activities.

The NPDES permit, section E.1 Sediment and Stormwater Management Plan requires an approval of a Sediment and Stormwater Management Plan (Plans), compliance with the approved Plans, as well as with the Federal effluent limitations at 40 CFR §450.21. "Sediment and Stormwater Management Plan (Plan) The owner shall develop, fully implement, and maintain at the site, the approved Plan. The plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for

¹ Source: NOAA National Climatic Data Center (<http://www.ncdc.noaa.gov/>).

Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”

Outer Banks Sediment and Stormwater Management Plan – North and South construction site were approved on August 23, 2019 and are provided in Attachment D (Item # 1) – Approved Sediment & Stormwater Management Plans (Approved Plans).

The Specification and Construction Plans for Jimtown Road (SR 285A) Outer Banks North and South were approved on August 6, 2019 and are provided in Attachment D (Item #2) – Approved Sediment & Stormwater Management Plans (Approved Plans).

ESC DETAILS AND SPECIFICATIONS:

GENERAL NOTES:

5. All erosion and sediment control practices shall comply with the Delaware Erosion and Sediment Control Handbook, latest edition.

Posting of Permit Coverage

General Requirement: Permit Part C.10

“A sign or other notice of permit coverage must be posted.... so that it is visible from the public road.... and it must use a font large enough to be readily viewed from a public right-of-way.... The notice must include:

- a. The NOI Number;
- b. Contact name and phone number to obtain additional construction site information;
- c. Contact name and phone number to obtain a copy of the approved plan; and
- d. The following statement “If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, call the DNREC’s Spill Notification 24 HR Hotline at 1-800-662-8802.”

Observation #1:

As identified in photograph DSCN0016 the Notice is posted without a discharge statement on the signage.

Handling of Waste Materials

General Requirement: Permit Part D.4.3.a

“All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody.”

Observation #2:

As identified in photographs DSCN0030 and DSCN0031 two 5-gallon buckets with an unknown substance were stored outside with no lid or protection from precipitation. Photographs DSCN009, DSCN0025, DSCB0039, DSCN0041 and DSCN0042, show discarded construction materials strewn across the ground in various sections of the site.

Concrete Washout

General Requirement: Permit Part D.4.4.e

“Washout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal.”

Section 3.6.2-1 of the Delaware ESC Handbook, Design Criteria regarding Concrete Washout “Signs should be placed designating the facility and throughout the construction site to direct traffic to its location.”

Detail DE-ESC-3.6.2 of the Sediment and Stormwater Management Plan states “Provide a sign designating the washout area and for large sites, provide signs throughout directing traffic to its location.”

Observation #3:

Photographs DSCN0034 and DSCN0036 document a white staining on the roadway which could be indicative of a past concrete or other type of washout, portions of the stained roadway are directly in front of a protected inlet that is slightly above roadway grade. At the time of inspection, there was a concrete washout location on site. As identified in photographs DSCN0045 and DSCN0046 there is no signage directing or identifying the concrete washout location as called for in the ESC Handbook and the Sediment and Stormwater Management Plan. In their June 4, 2021 response to the EPA document request, the site included a photo (Attachment E) documenting the signage for concrete washout facilities.

Concrete washout issues were identified by the Sussex County Conservation District in a May 11, 2021 inspection of the site. That inspection noted “Concrete washout material has been dumped in several spots in the vicinity of the recently installed house foundation. A concrete washout with signs is required on the site. Clean up the washout material and install as washout per detail found in S&S plan. Failure to do so before anymore concrete is poured will result in the building permits being withheld.”

Spill Control

General Requirement: Permit Part D.4.5.k - Leaks and Drips

- i. Use drip pans or absorbent pads at all times. Place under and around leaky equipment.
- ii. Do not allow oil, grease, fuel and chemicals to drip onto the ground.
- iii. Have spill kits and clean up material on-site.
- iv. Repair leaky equipment and remove problem vehicles and equipment from the site. Clean up contaminated soil immediately.
- v. Store contaminated waste in sealed containers constructed of suitable material. Label these containers properly.
- vi. Clean up all leaks, promptly dispose of waste and spent clean up materials.”

Observation #4:

Photographs DSCN0037 and DSCN0038 document a black staining on the roadway that could be indicative of past leaking equipment that was not cleaned. The permit calls for drip pans or pads to be used under leaking equipment and for the clean-up of all leaks.

Stockpile Management

General Requirement: Permit Part D.1.5.b – Stockpile and Sediment Barrier

“Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all downgradient perimeter areas.”

Section 3.7.3 of the Delaware ESC Handbook, Design Criteria regarding Soil Stockpiles and Detail DE-ESC-3.7.3 of the Sediment and Stormwater Management Plan “The stockpile must be protected with an approved perimeter control such as silt fence, stabilized earthen berm, or compost log(s), following the slope versus length requirements of that control. The perimeter control shall be a minimum of 3’ from the toe of the stockpile, or as specified by the chosen perimeter control, whichever is greater.”

Observation #5:

As identified in photographs DSCN0103, DSCN0104, DSCN0149, and DSCN0150 silt fencing was not installed prior to EPA’s arrival on site. Silt fencing was being installed around the stockpile at the conclusion of the inspection as seen in DSCN0149 and DSCN0150. It did not appear that a 3’ buffer was placed between the silt fencing and the toe of the stockpile as required in the ESC Handbook and the Sediment and Stormwater Management Plan.

Silt Fence Maintenance

General Requirement:

Section 3.1.2-2 of the Delaware ESC Handbook, Design Criteria regarding silt fence “Repairs should be made immediately.”

Detail DE-ESC-3.1.2.1 of the Sediment and Stormwater Management Plan states “Maintenance shall be performed as needed...”

Section 3.1.2-1 Detail Sheet of the Delaware ESC Handbook and Detail 3.1.2.1 of the Sediment and Stormwater Management Plan, Design Criteria regarding silt fence “Embed fabric minimum 8” vertically into ground.”

Observation #6:

As identified in photographs DSCN0090, DSCN0091, DSCN0098, DSCN0100, DSCN0101, DSCN0114, DSCN0115, DSCN0118, DSCN0127, DSCN0136, DSCN0137, DSCN0138, DSCN0140, DSCN0144, DSCN0145, DSCN0164, DSCN0165 silt fencing was undermined, ripped, down, improperly removed and required cleanout. Photographs DSCN0136 through DSCN0138 and DSCN0140, DSCN0144, and DSCN0145 illustrate a section of silt fencing where the fabric was not touching the ground and potentially allowing flows offsite and into a wetland. It should be noted that there was no documented

precipitation for a week prior to the inspection at the Lewes 2.4 SSE, NOAA weather station in Lewes Delaware.

In their June 4, 2021 response to the EPA document request, the site included photos (Attachment E) documenting repairs made to silt fencing.

Stabilized Construction Entrance

General Requirement:

Section 3.4.7 (Sheet 1) of the Delaware ESC Handbook and Detail DE-ESC-3.4.7 (Sheet 1) of the Sediment and Stormwater Management Plan, Design Criteria regarding stabilized construction entrance “A stabilized pad of aggregate on a geotextile fabric base located at any point where traffic will be entering a construction site to or from a public right-of-way, street, alley, sidewalk or parking area.”

Section 3.4.7 (Sheet 2) Detail Sheet of the Delaware ESC Handbook and Detail DE-ESC-3.4.7 (Sheet 2) of the Sediment and Stormwater Management Plan, Design Criteria regarding stabilized construction entrance “Width-Ten (10) foot minimum, but no less than the full width at points where ingress or egress occurs. Maintenance-The entrance shall be maintained in a condition which will prevent tracking or flowing of sediment onto a public right-of-way.”

Observation #7:

Photographs DSCN0170, DSCN0172 and DSCN0173 show the stabilized construction entrance and document where sediment track-out is entering a roadway. The width of the stabilized construction entrance does not appear to extend the width of the entrance and the photographs appear to show tire tracks on the entrance of the site where there is no aggregate, only bare sediment.

In their June 4, 2021 response to the EPA document request, the site included a photo (Attachment E) documenting a refurbished stabilized construction entrance.

Implementation of the Plan

General Requirement: The Specification and Construction Plans for Jimtown Road (SR 285A) Outer Banks North and South

Plan Sheet C-850, The plan map shows compost filter logs in the swale along Jimtown Road.

Observation #8:

The drawing on Sheet C-850 shows erosion control blankets and several compost filter logs (CFLs) in the swale that is located between the site and Jimtown Road, as evidenced in photographs DSCN0011, DSCN0013, DSCN0018, DSCN0019, DSCN0020, DSCN0022, and DSCN0093 there were no CFLs or erosion control blankets in the swale at the time of the inspection.

Photographs (Attachment E) provided by the developer after the inspection show hay placed in this area as an erosion control measure but there are no erosion control blankets, there is one CFL deployed in those photographs.

IV. Records Review

During the opening conference, the EPA Inspection Team requested documentation including: Notice of Intent, Permit, Erosion and Sediment Control Plan, Wetlands Permit and Self Inspection Reports from February 1, 2021 to the date of the inspection. The requested documents and additional documents showing relating to the wetlands and corrective actions taken since the inspection were sent to the EPA Inspection Team and received on June 4, 2021. A copy of the Permit is provided under Attachment A.

V. Closing Conference

After the site walk, the EPA Inspection Team met with the site representatives for a closing conference. The EPA Inspection Team shared preliminary observations with the site. The EPA Inspection Team reiterated to the site representatives that all preliminary observations discussed were not compliance determinations. Any and all preliminary observations shared were subject to further investigation by EPA upon the additional review of records and documentation. Additional observations may be contained in this inspection report that were not identified at the time of the closing conference after EPA reviewed additional materials following the inspection.

The inspection concluded at approximately 4:00 pm.