

REPORT OF CONSTRUCTION STORMWATER COMPLIANCE EVALUATION INSPECTION (CEI)

At

DeVerger Lake

(b) (6)

De Soto, MO 63020

NPDES Permit: unpermitted

On

October 12, 2023

By

U. S. ENVIRONMENTAL PROTECTION AGENCY

Region 7: Enforcement and Compliance Assurance Division (ECAD)

1.0 INTRODUCTION

I performed a Construction Stormwater Compliance Evaluation Inspection (CEI) at Randal DeVerger's property, located at 2772 Stonehouse Road in De Soto, Missouri on October 12, 2023. The inspection was authorized by Section 308(a) of the Federal Water Pollution Control Act, as amended. This narrative report and attachments present the findings and observations made during the Construction Stormwater CEI. This inspection was conducted in accordance with the procedures described herein and following all applicable EPA Region 7 Standard Operating Procedures (SOPs), unless otherwise noted.

2.0 PARTICIPANTS

Randal DeVerger, Owner **(b) (6)**
Email: bdeverger@cdxconsultants.com

Fribis Engineering
Gene Fribis, P.E., Engineer (636) 280-5509
Email: gfribis@fribisengr.com

U.S. Army Corps of Engineers (COE):
Jaynie Doerr, Section Chief
Samantha Hollenberg, Regulatory Project Manager

U.S. Environmental Protection Agency (EPA):
Hannah Lewis, Life Scientist (913) 551-7679
Email: lewis.hannah@epa.gov
Delia Garcia, Ph.D., Environmental Scientist (913) 551-7262

3.0 INSPECTION PROCEDURES

Ms. Hollenberg contacted Mr. DeVerger and arranged a meeting for a site visit on October 12, 2023. I arrived at Mr. DeVerger's property at 2:00 p.m. with Dr. Garcia, Ms. Hollenberg, and Ms. Doerr. Personnel from both USACE and EPA listed above introduced themselves to Mr. DeVerger and Mr. Fribis. I presented my credentials and informed them I would be performing a Construction Stormwater inspection. Dr. Garcia provided a confidentiality notice to Mr. DeVerger which he signed claiming no confidential business information had been collected (attachment 7).

During the entrance meeting, Ms. Hollenberg explained that both agencies had recently received updated guidance on evaluating water for jurisdiction following the Supreme Court decision in *Sackett v. EPA*, 143 S. Ct. 1322 (2023). Therefore, she wanted to conduct further evaluation of the impacted stream. Mr. DeVerger explained his intentions of constructing a lake and residence on the property. Mr. Fribis explained where the lake would be located and the elevation of the dam.

I explained to both gentlemen I would be conducting the Construction Stormwater inspection under the authority of Section 308(a) of the Federal Water Pollution Control Act to evaluate the site's compliance status with the requirements of Section 402 of the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) program, and Missouri Clean Water Law. I asked Mr. DeVerger whether he had a construction stormwater permit with the Missouri Department of Natural Resources (MDNR) and a Stormwater Pollution Prevention Plan (SWPPP). He stated he did not have either. All of the participants toured the property after the entrance meeting.

During the exit meeting, each agency discussed their findings and next steps with Mr. DeVerger and Mr. Fribis. I explained my findings during the exit meeting. A Notice of Preliminary Findings (NOPF) was provided to and signed by Mr. DeVerger (attachment 4). I provided my contact information for future questions. I also suggested he contact MDNR for assistance on obtaining a permit. Twenty-seven photographs and two videos were taken during the inspection. See attachment 2 for the digital image log and images.

4.0 SITE DESCRIPTION

4.1 Site Operations

The site is located off Stonehouse Road, De Soto, Missouri. The site's physical address is (b) (6), De Soto, Missouri. The mailing address is (b) (6), St. Louis, Missouri 63131. The area owned by Mr. DeVerger at the De Soto address is approximately 250 acres. At the time of the inspection, approximately 14 acres were disturbed for the construction of the lake. According to satellite imagery, land disturbance began on May 14, 2023, or earlier.

At the time of the inspection, the 14-acre area had been cleared of trees, except one tree, including along the stream (photo 1). The stream flows east to west through the center of this area and is a tributary to Dry Creek. The stream was flowing during the inspection. A spring is located near the east site boundary which feeds the stream (photo 18). Heavy construction equipment was on site (photos 16, 22). See attachment 3 for the photo locations and stormwater

flow patterns. Stormwater runoff north of the stream flows south into the stream. Stormwater runoff south of the stream flows north into the stream. The stream flows west off site to meet with Dry Creek.

4.2 Regulatory History

The MDNR inspected the site on June 23, 2023. As a result of the inspection, a Letter of Warning was sent to Mr. DeVerger stating the site was not in compliance with Missouri Clean Water Law because of unpermitted land disturbance activities (attachment 5). The letter required action to be taken by August 14, 2023, to obtain a Missouri State Operating Permit (MSOP) for land disturbance activities. The MSOP authorizes stormwater discharge from construction and land disturbance activities under the Missouri Clean Water Law and the NPDES program. The MDNR notified Mr. DeVerger of the violations via email on June 27, 2023, prior to the Letter of Warning being sent. Also, Ms. Hollenberg emailed Mr. DeVerger on June 27, 2023, reminding him to obtain a permit through MDNR. At the time of the October 12th EPA inspection, the site was still unpermitted.

5.0 FINDINGS AND OBSERVATIONS

On October 12, 2023, I conducted a Construction Stormwater inspection to determine whether the activities at Mr. DeVerger's property were in compliance with Section 402 of the Clean Water Act. The weather conditions at the time of the inspection were sunny and clear (70°F). Precipitation had not occurred in the four days prior to the inspection. I met with Mr. DeVerger and Mr. Fribis, performed a visual inspection of the site and reviewed permit requirements. No documentation was provided during the inspection.

5.1 Stormwater Pollution Prevention Plan (SWPPP)

According to the MSOP, the permittee must develop and implement a SWPPP prior to land disturbance activities. During the inspection, Mr. DeVerger stated he did not have a SWPPP. After the inspection was complete, Mr. DeVerger called me on October 18th stating he had obtained a MSOP for land disturbance activities. During the conversation, I asked whether a SWPPP had been developed and implemented. He stated he did not have a SWPPP, but Mr. Fribis was working on one. I then asked him to email me a copy of the permit authorization to confirm his statement. As of the date of this report, I have not received any documentation from Mr. DeVerger.

5.2 Visual Observations

The 14-acre disturbed area is a valley with a stream flowing down the center (photos 2, 4-6, 19). The stream enters the site from the east and exits at the west boundary (photos 20, 27). At least one spring feeds this stream. Vegetation upstream of the disturbed area is shown in photos 20 and 21 while downstream is shown in photos 26 and 27. Small fish were present in the stream upstream of the disturbed area. Vegetation has been removed from the stream banks as well with only minimal volunteer vegetation remaining (photos 2, 4-6, 19). Tracking from heavy equipment can be seen in the stream in photo 14. Sediment deposits in the stream are shown in photos 4-6, and 19.

Some silt fencing sections present north and south of the stream were the only structural control measures on site. However, the silt fencing was not installed or maintained to be effective at filtering stormwater runoff. As shown in photos 7-15, the silt fencing was loose and not trenched in allowing stormwater to flow under the fencing. Also, there were no best management practices (BMPs) in large areas between the silt fencing sections and the stream.

All trees had been cleared from the disturbed area except one (photo 1). No stabilization efforts had been made (photos 1-3, 7-17). There was minimal volunteer vegetation present across the site. There were no BMPs along the stream banks (photos 2, 4-6, 14-15, 19).

A dam was being constructed at the west end of the site to create the lake. It was about 30% complete (photo 9). The dam did not have any BMPs such as stabilization or erosion controls in place (photos 9, 25). There were erosion rills present on the slopes of the dam (photo 25). Also, a large pile of sediment was located near the stream and did not have any BMPs in place (photos 4,5).

6.0 SUMMARY

The 14-acre disturbed area was unstabilized and lacked any effective sediment and erosion control measures. Sediment deposits were present in the stream during the MDNR inspection on June 23, 2023 as well as the EPA inspection described in this report. Mr. DeVerger was notified by MDNR in writing of the requirement to obtain a permit for land disturbance activities on June 27 and July 13 but had not obtained a permit at the time of the EPA inspection.

During the exit meeting, a NOPF was provided to Mr. DeVerger with the following findings. Each was explained in detail to Mr. DeVerger.

1. Unpermitted land disturbance of ~14 acres
2. No SWPPP
3. Lack of BMPs
4. Ineffective silt fence
5. Sediment discharge deposits in stream

As of the writing of this report, a written response to the NOPF has not been received. According to MDNR's permit database, a MSOP permit (MO-RA25287) was obtained online for the site on October 16, 2023.

**HANNAH
LEWIS**
Hannah Lewis
Life Scientist

Digitally signed by
HANNAH LEWIS
Date: 2023.11.29
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**JODI
BRUNO**
Jodi Bruno
Branch Manager

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ATTACHMENTS:

1. NPDES Stormwater Worksheet (5 pages)
2. Digital Image Log and Images #1 - #27 (30 pages)
3. Stormwater Runoff and Photo Locations Maps (2 pages)

4. NOPF (1 page)
5. MDNR LOW (5 pages)
6. MDNR NPDES Permit (30 pages)
7. CBI (page 1)