



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
REGULATORY DIVISION
6855 STATE ROUTE 66
NEWBURGH, INDIANA 47630

RECEIVED

JUN 14 2019

Vanderburgh County Engineering

June 6, 2019

SENT VIA CERTIFIED MAIL

Regulatory Division
MCE Branch (CELRL-RDE)
ID No. LRL-2019-00511-GJD

Mr. Paul Elpers
Elpers Brothers Construction
11911 Winery Road
Wadesville, Indiana 46638

Dear Mr. Elpers:

This letter is in reference to a recent complaint received by this office regarding the construction of an in-line sediment basin in an unnamed intermittent tributary stream to Schlensker Ditch, located at Stonegate Subdivision, off Browning Road, Evansville, Vanderburgh County, Indiana. Based on information provided by the complainant and from information gathered from you, the basin was constructed in 2007.

A site visit was conducted by members of my staff on April 26, 2019 to determine if any unauthorized activities had taken place in jurisdictional "Waters of the United States", pursuant to Section 404 of the Clean Water Act (CWA). A review by this office determined that approximately 600 linear feet of the unnamed intermittent tributary stream has been impounded by a basin structure constructed in the stream. Additionally, a road culvert and in-stream structure located upstream of the road crossing has also been placed in the tributary stream. These activities involved mechanical clearing, filling, grading, and the placement of structures in the stream (earthen dam, culvert, and drop structure). The tributary stream, based on our site inspection and subsequent review of aerial photographs and other resources, is a jurisdictional Waters of the United States.

The U.S. Army Corps of Engineers (Corps) exercises regulatory jurisdiction over Waters of the United States. It is unlawful under Section 301 of the CWA (33 USC 1311) to place dredged or fill material into Waters of the United States without prior authorization. Normally, the authorization is in the form of a Department of the Army (DA) permit issued in accordance with the provisions of Section 404 of the CWA (33 USC 1344). According to our records, no Department of the Army (DA) permit has been issued authorizing the work referenced above. Therefore, the work which has been completed constitutes a violation of Section 301 of the CWA.

Considering the age of the violation, the nature of the aquatic resource impact, your efforts to secure appropriate authorizations through other regulatory agencies at the time the work was completed, and your cooperation during the Corps' review process, this office will not seek to pursue this matter further with a legal action and there will be no further action taken by this office regarding this specific violation. However, you are hereby notified that any future violations of the CWA completed by your company would be treated as knowing and willful violations of the law,

as you now aware of the requirement for DA authorization for activities requiring the discharge of fill or dredged material into Waters of the United States. You are further advised that if you have any current projects that may be in violation of the CWA as described above, you should notify this office within 30 days of receipt of this letter so that those issues may be resolved.

If you have any questions regarding this letter, or other matters that pertain to compliance with the CWA, please contact Mr. George DeLancey by mail at the letterhead address, ATTN: CELRL-RDE, by email at George.J.Delancy@usace.army.mil, or by telephone at 812-842-2807. Any correspondence on this matter should refer to our ID No. LRL-2019-00511-GJD.

Sincerely,



Eric G. Reusch
Chief, Mitigation, Compliance and Enforcement Branch
Regulatory Division

Copies Furnished:

IDEM – 401 WQC
Vanderburgh County Engineering Dept. – Storm Water Coordinator



**Section 401 and State Regulated Wetlands Program
Wetlands and Stormwater Section
Office of Water Quality
Indiana Department of Environmental Management**

Inspection Report

Purpose:
Document site conditions

Date Distributed: June 17, 2019

Authority:
This inspection was conducted pursuant to Indiana Code (IC) 13-14-2-2 and is consistent with the requirements of IC 13-14-5.

Certified Mail Number:

Responsible Party and Location Information

Landowner: Lori Smith

Site Name: Stonegate Estates

IDEM Identification Number:

County: Vanderburgh

Incident No:

Date of Site Visit: June 12, 2019

Project Location/Address *(Use for sites without ID Number):*

Contact Information *(Use for sites without ID Number)*

Inspected

Stream/River(s) Wetland(s) Open Water Mitigation Other:

Observations/Comments *(Description of activities, impacts, violations, corrective action, dates):*

- (1) Aileen Driscoll and Ronnie Boehm (IDEM) met with Mrs. Smith and her consultants to discuss the sedimentation issues related to the lake constructed on her property.
- (2) The UNT to Schlensker Ditch was converted to a sediment basin around 2008. This work was conducted without prior authorization from IDEM's 401 program. Mrs. Smith proposed dredging the lake or restoring it back to a stream, both of which are viable options from a permitting perspective.
- (3) If Mrs. Smith chooses to convert the lake back to a stream, the project will be considered an ecological lift and will not require any mitigation, even if impacts exceed 300 linear feet or 0.10 acre. This project might also include reconstructing the outfall structure to repair extreme erosion. If this route is taken, the outfall work should be submitted on the same permit application as the lake conversion.
- (4) Mrs. Smith will consult with the County government to obtain approval to convert the lake back to a stream, in case it was required to meet local regulations.

Inspection Distribution and Contact Information

Questions/Inquiries Concerning this Report Should be Directed to the Inspector at:

Aileen Driscoll
IDEM Wetlands Project Manager
100 North Senate Avenue
Indianapolis, Indiana 46204

Phone: 317-234-0953
Toll Free: 1-800-451-6027

E-Mail: adriscol@idem.In.gov

Others Present at Site: Brooke Fox, Erika Smith (IDEM)

Copies Provided to:

- U.S. Army Corps of Engineers:** George DeLancey, Newburgh Field Office (electronic)
- IDEM Stormwater Program for assessment of compliance with 327 IAC 15-5:** Ronnie Boehm (electronic)
- DNR:**
- Agent:** Michael Sears, MORELY Corp. (electronic)
- Other:**



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REGULATORY DIVISION
6855 STATE ROUTE 66
NEWBURGH, INDIANA 47630
June 7, 2019

Regulatory Division
MCE Branch (CELRL-RDE)
ID No. LRL-2019-00511-GJD

Mrs. Lori Smith
1600 Skipping Stone Drive
Evansville, Indiana 47725

Dear Mrs. Smith:

This letter is in reference to a recent complaint from you, received by this office, regarding the construction of an in line sediment basin/lake in an unnamed intermittent tributary stream to Schlensker Ditch, located at the Stonegate Subdivision, off Browning Road, Evansville, Vanderburgh County, Indiana.

A site visit was conducted on April 26, 2019. The purpose of the inspection was to meet with you, discuss your concerns, and determine if any unauthorized activities had taken place in jurisdictional "Waters of the United States", pursuant to Section 404 of the Clean Water Act (CWA). A review by this office did determine that approximately 600 linear feet of the unnamed intermittent tributary stream has been impounded by a basin structure constructed in stream. Also a road culvert and in stream structure upstream of the road crossing had also been placed in the tributary stream. It is believed that the basin was constructed about 2007.

The Corps of Engineers exercises regulatory jurisdiction on "Waters of the United States". It is unlawful under Section 301 of this Act (33 USC 1311) to place dredged or fill material into "Waters of the U.S." without prior authorization. Normally, the authorization is in the form of a DA permit issued in accordance with the provisions of Section 404 of the CWA (33 USC 1344).

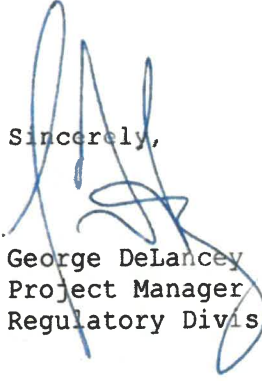
It was determined at the conclusion of our site inspection, after reviewing the available information, that a violation of the CWA had occurred with the construction of the sediment basin/lake, the road crossing, and the in stream structure. The violation involves the mechanical clearing, filling, placement of structures in stream (earthen dam, culvert, and drop structure) and grading of a tributary stream of Schlensker Ditch. The tributary stream, based on our site inspection and subsequent review of aerial photographs and other map resources, is a jurisdictional "Waters of the United States." According to our records, no Department of the Army (DA) permit has been issued authorizing the work referenced above. Therefore, the work which has been done constitutes a violation of Section 301 of the CWA.

During the site visit, you discussed some ideas that you and your agents were considering to resolve some of your concerns in regards to the basin/lake. Included with the ideas was a consideration to dredge the basin/lake, as well as a consideration to remove the basin/lake and

to restore the unnamed tributary stream through its footprint. We discussed the requirements that these projects may have towards obtaining proper DA and State authorizations as the project may apply towards Section 404/401 of the CWA. If you pursue either of these considerations, this office encourages you to submit plans prior to any work being undertaken to determine the need for prior DA authorization.

If you have any questions regarding this letter, or other matters that pertain to this matter, you can contact me by writing to the above address, ATTN: CELRL-RDE or calling him at 812-842-2807. Any correspondence on this matter should refer to our ID No. LRL-2019-00511-GJD.

Sincerely,



George DeLancey
Project Manager
Regulatory Division

Copy Furnished:

DeLancey - RD-MCE
IDEM - 401 WQC