



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

BY HAND

March 14, 2019

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square
Suite 100, Mail Code ORC04-6
Boston, MA 02109-3912

RECEIVED

MAR 14 2019

EPA ORC ^{W3}
Office of Regional Hearing Clerk

Re: In the Matter of: Fafard Real Estate and Development Corp., CWA-01-2019-0017

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service. I have included the original and one copy of these documents. I have also included a copy of the letter notifying the Commonwealth of Massachusetts of the filing of this Complaint.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1705.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Conway".

Tim Conway
Senior Enforcement Counsel

Enclosure

cc: Richard Terrill, Fafard Real Estate and Development Corp.
Paul J. Beattie, Fafard Real Estate and Development Corp.

RECEIVED

MAR 14 2019

EPA ORC
Office of Regional Hearing Clerk

WS

United States Environmental Protection Agency
Region 1

_____)	
IN THE MATTER OF)	Docket No. CWA-01-2019-0017
)	
Fafard Real Estate and Development Corp.,)	
Uxbridge Multi Family Realty, LLC,)	
Bellingham Residential Realty, LLC,)	
Longview Realty Trust)	Administrative Complaint and
)	Notice of Opportunity for Hearing
)	
Respondents.)	
)	
)	
)	
120 Quarry Drive)	Proceeding to Assess Class II
Milford, MA 01757)	Civil Penalty under Section 309(g)
_____)	of the Clean Water Act

COMPLAINT

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to Fafard Real Estate and Development Corp; Uxbridge Multi Family Realty, LLC; Bellingham Residential Realty, LLC; and Longview Realty Trust. (collectively, “Respondents”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Director, Office of Environmental Stewardship, United States Environmental Protection Agency (“EPA”), Region 1.

II. NATURE OF ACTION

2. The Complaint hereby notifies Respondents that EPA has determined that Respondents have violated Sections 301(a) and/or 308(a) of the CWA, 33 U.S.C. §§ 1311(a)

and/or 1318(a), and 40 C.F.R. § 122.26 as well as the requirements of EPA's current National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges from Construction Activities ("CGP"). For these alleged violations, Complainant intends to seek civil penalties against Respondents pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. §1319(g)(2)(B).

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), Complainant will notify the Massachusetts Department of Environmental Protection ("MA DEP") prior to the assessment of a penalty in this action.

4. The Notice of Opportunity for Hearing describes Respondents' options to file an Answer to the Complaint and/or to request a formal hearing.

III. STATUTORY AND REGULATORY AUTHORITY

5. Section 301(a) of the CWA prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership."

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, dredged spoil, garbage, rock, sand and cellar dirt.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

11. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), specifies that a NPDES permit is required for any stormwater “discharge associated with industrial activity.” *See also* 40 C.F.R. § 122.26(a)(1)(ii).

12. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

13. Pursuant to Sections 308(a) and 402 of the CWA, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

14. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

15. Forty C.F.R. § 122.26(b)(14)(x) defines “industrial activity” to include “construction activity” such as “clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area.” “Construction activity” also includes “the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more.”

16. Forty C.F.R. 122.26(c) requires dischargers of storm water associated with “industrial activity” to apply for an individual permit or to seek coverage under a promulgated general permit.

17. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities (“Construction General Permit” or “CGP”), 63 Fed. Reg. 7858 (Feb. 17, 1998). EPA subsequently re-issued the CGP in 2003, 2008, 2012, and 2017. The 2017 CGP became effective on February 16, 2017 (See 82 Fed. Reg. 6534 (January 19, 2017)). The 2017 CGP authorizes, subject to conditions contained therein, the discharge of pollutants in stormwater runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts.

18. Appendix A of the 2017 CGP defines “operator” as “any party associated with a construction project” that has either “operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications” or “day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.”

19. Part 2.1.4 of the 2017 CGP sets requirements to ensure that all storm water controls are maintained and remain in effective operating condition.

20. Part 2.1.4(c) of the 2017 CGP requires that if a storm water control needs repair or replacement that part 5 of the 2017 CGP must be complied with.

21. Part 2.2.3 of the 2017 CGP requires sediment controls along any perimeter areas of the site that will receive pollutant discharge.

22. Part 2.2.5.C of the 2017 CGP requires that stockpiles composed in whole or in part of sediment and/or soil that will be unused for 14 or more days be appropriately stabilized.

23. Part 2.2.14 of the 2017 CGP requires that exposed portions of a site be stabilized.

24. Part 2.2.14(a) of the 2017 CGP requires the immediate installation of stabilization measures in areas where construction activities will be temporarily inactive for 14 or more calendar days, and that such stabilization be completed within 14 calendar days.

25. Part 2.3.3.e.iii of the 2017 CGP requires that construction and domestic wastes, on business days, be cleaned up and disposed of in designated waste containers.

26. Part 4.6.7 of the 2017 CGP requires that necessary maintenance be completed and corrective action be completed based on the results of a site inspection.

27. Part 5.2.3 of the 2017 CGP sets the requirements that when a problem necessitates a new or replacement control or significant repair that the installation, modification, or repair be completed no later than 7 calendar days from the time of discovery.

28. Section 309(g) of the CWA authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of Sections 301(a) and 308(a) of the CWA, and 40 C.F.R. § 122.26, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations of Sections 301(a) and 308(a) of the CWA, 40 C.F.R. § 122.26, and the 2017 CGP that occurred from November 2, 2015 through January 15, 2019 are subject to a penalty of up to \$21,933 per day of violation with a maximum penalty of \$274,159.

IV. GENERAL ALLEGATIONS

29. The Maplebrook Commons site is a private development located at Old Bridge Lane in Bellingham, Massachusetts (“Maplebrook Commons Site”). Phase III of the project at the Maplebrook Commons Site involves the construction of three condominium buildings. The estimated area to be disturbed at the Maplebrook Commons Phase III Site is greater than 1 acre and is part of a larger plan that will ultimately disturb five acres or more. The Maplebrook

Commons Phase III Site is along the eastern side of Old Bridge Lane, and south of the western portion of Maple Brook Road.

30. The Ledgemere development site is a private development located at Crownshield Road in Uxbridge, Massachusetts (“Ledgemere Site”). The current project at the Ledgemere Site involves the construction of single-family homes, townhouses, condominiums, and apartments on and around Crownshield Avenue. The estimated area to be disturbed at the Ledgemere Site is greater than 1 acre and is part of a larger plan that will ultimately disturb five acres or more. The active construction includes Hyde Park Circle, and an unnamed street southwest of Hyde Park Circle.

31. The Lakeview Estates Site is a private development located at Candlelight Lane in Bellingham, Massachusetts (“Lakeview Estates Site”). The project at the site involves the construction of residential property. The estimated area to be disturbed at the Lakeview Estates Site is greater than 1 acre and is part of a larger plan that will ultimately disturb five acres or more.

32. The Maplebrook Commons Site is owned and operated by Longview Realty Trust and Fafard Real Estate and Development Corporation (“Maplebrook Commons Respondents”). The Ledgemere Site is owned and operated by Uxbridge Multi Family Realty LLC and Fafard Real Estate and Development Corporation (“Ledgemere Respondents”). The Lakeview Estates Site is owned and operated by Bellingham Realty Trust, LLC and Fafard Real Estate and Development Corporation (“Lakeview Estates Respondents”) (collectively, “Respondents”). Uxbridge Multi Family Realty LLC, Bellingham Realty Trust, and Longview Realty Trust all are owned by the same business trust as Fafard Real Estate and Development Corporation.

33. Fafard Real Estate and Development Corporation (“Respondent Fafard”) is incorporated in the Commonwealth of Massachusetts and has its principal place of business at 120 Quarry Drive in Milford Massachusetts.

34. Each of the Respondents is a “person” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

35. On July 11, 2018, Complainant issued a CWA Information Request to Respondent Fafard (the “308 Letter”) pursuant to Section 308(a) of the CWA.

36. On September 10, 2018, Respondent Fafard submitted a response to the 308 Letter (the “308 Response”).

Maplebrook Commons

37. On May 16, 2017, Maplebrook Commons Respondents submitted their NOI to EPA for coverage under the 2017 CGP for the Maplebrook Commons Site, and coverage under the permit was authorized starting May 30, 2017 with a tracking number of MAR1000IZ,

38. Since May 30, 2017, Maplebrook Commons Respondents have been conducting construction activities at the Maplebrook Commons Site including clearing and grading land, and erecting buildings.

39. Accordingly, Maplebrook Commons Respondents have either directed or participated directly in construction activities at the Maplebrook Commons Site, including grubbing, clearing, grading, filling, and excavation activities, that have resulted in the disturbance of greater than one acre of total land area.

40. Since at least May 30, 2017, Maplebrook Commons Respondents have had operational control over the construction plans and specifications for the Maplebrook Commons Project, including the ability to make modifications to those plans and specifications.

41. Since at least May 30, 2017, Maplebrook Commons Respondents have had day-to-day operational control of the construction activities at the Maplebrook Commons Site that are necessary to ensure compliance with the 2017 CGP, including the development of a SWPPP for the Maplebrook Commons Site and the installation and maintenance of erosion control measures.

42. Accordingly, each of the Maplebrook Commons Respondents is an “operator” at the Maplebrook Commons Site as defined at Appendix A of the 2017 CGP and 40 C.F.R. § 122.2.

43. The construction activities at the Maplebrook Commons Site are “industrial activities” as defined at 40 C.F.R. § 122.26(b)(14)(x).

44. These construction activities at the Maplebrook Commons Site have resulted in the discharge of “storm water associated with industrial activity” within the meaning of 40 C.F.R. 122.26(c).

45. The stormwater discharges from the Maplebrook Commons Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

46. The stormwater discharges from the Maplebrook Commons Site are conveyed through ditches, culverts, swales, gullies, and channels through disturbed areas of the Maplebrook Commons Site and are contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity. The stormwater discharges from the Maplebrook Commons Site flow offsite into a nearby wooded wetland.

47. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity contained in the stormwater discharges from the Maplebrook Commons Site are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The stormwater discharges from the Maplebrook Commons Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

48. The ditches, culverts, swales, gullies, and channels at the Maplebrook Commons Site are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

49. The stormwater discharges from the Maplebrook Commons Site flow offsite into a wooded wetland which is adjacent to the Peters River. The Peters River flows into the Blackstone River, which flows into the Seekonk River, which flows into Narragansett Bay, which in turn empties into the Atlantic Ocean.

50. The wooded wetland, the Peters River, the Blackstone River, the Seekonk River, and the Atlantic Ocean are all “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

51. On May 16, 2018, EPA Region 1 conducted a CWA compliance inspection of the Maplebrook Commons Site to evaluate Maplebrook Commons Respondents’ compliance with the 2017 CGP (the “EPA Maplebrook Commons Inspection”).

52. At the time of the EPA Maplebrook Commons Inspection, the Maplebrook Commons Site sloped slightly down from Old Bridge Lane. The eastern end of the Maplebrook Commons Site formed a 20-foot slope down to existing woodlands and wetlands. The eastern end was built using fill and had not been stabilized for more than 14 days.

53. On the eastern end of the Maplebrook Commons Site, a gully had formed on the 20-foot slope. The gully had no erosion controls or repairs.

54. Silt fencing was installed at the bottom of the slope on the eastern end of the Maplebrook Commons Site, but a section of that fence had been overrun by sediment deposits.

55. During 2018, inspections were performed of the Maplebrook Commons Site, checking the functioning of erosion controls and the need for any new controls. These inspections were documented and the reports provided to Maplebrook Commons Respondents.

56. An inspection report dated April 13, 2018 and five subsequent inspection reports through May 15, 2018 noted the need to stabilize the slope. Five inspection reports beginning April 21, 2018 through May 15, 2018 noted the need to repair a rill [erosion gully] on the slope.

Ledgemere

57. On May 12, 2017, Respondent Fafard electronically submitted its NOI to EPA for coverage under the 2017 CGP for the Ledgemere Site, and coverage under the permit was authorized starting May 26, 2017 with a tracking number of MAR1000FU.

58. Prior to May 2017, Ledgemere Respondents began construction activities at the Ledgemere Site, including clearing, grading, excavating foundations and erecting buildings. Ledgemere Respondents continued construction activities at the site after May 26, 2017.

59. Accordingly, Ledgemere Respondents have either directed or participated directly in construction activities at the Ledgemere Site, including grading, filling, and excavation activities, that have resulted in the disturbance of greater than one acre of total land area.

60. Since May 26, 2017, Ledgemere Respondents have had operational control over the construction plans and specifications for the Ledgemere Project, including the ability to make modifications to those plans and specifications.

61. Since May 26, 2017, Ledgemere Respondents have had day-to-day operational control of the construction activities at the Ledgemere Site that are necessary to ensure compliance with the 2017 CGP, including the development of a SWPPP for the Ledgemere Site and the installation and maintenance of erosion control measures.

62. Accordingly, Ledgemere Respondents are “operators” at the Ledgemere Site as defined at Appendix A of the 2017 CGP and 40 C.F.R. § 122.2.

63. The construction activities at the Ledgemere Site are “industrial activities” as defined at 40 C.F.R. § 122.26(b)(14)(x).

64. These construction activities at the Ledgemere Site have resulted in the discharge of “storm water associated with industrial activity” within the meaning of 40 C.F.R. 122.26(c).

65. The stormwater discharges from the Ledgemere Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

66. The stormwater discharges from the Ledgemere Site are conveyed through ditches, culverts, swales, gullies, and channels through disturbed areas of the Ledgemere Site and are contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity. The stormwater discharges from the Ledgemere Site flow into an unnamed stream that flows into the Blackstone River.

67. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity contained in the stormwater discharges from the Ledgemere Site are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The stormwater discharges from the Ledgemere Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

68. The ditches, culverts, swales, gullies, and channels at the Ledgemere Site are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

69. The stormwater discharges from the Ledgemere Site flow offsite into an unnamed stream that flows into the Blackstone River, which flows into the Seekonk River, which flows into Narragansett Bay, which in turn empties into the Atlantic Ocean.

70. The unnamed stream, the Blackstone River, the Seekonk River, and the Atlantic Ocean are all “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

71. On April 9, 2018, EPA Region 1 conducted a CWA compliance inspection of the Ledgemere Site to evaluate Ledgemere Respondents' compliance with the 2017 CGP (the "EPA Ledgemere Inspection").

72. At the time of the EPA Ledgemere Inspection, the active construction on the Ledgemere Site was along Hyde Park Circle, and on an unnamed road to the west of Hyde Park Circle.

73. At the time of the EPA Ledgemere Inspection, the area between the southeastern end of Hyde Park Circle, the stormwater basin to the south and the stream to the west contained trash and debris.

74. At the time of the EPA Ledgemere Inspection, the unnamed road southwest of Hyde Park Circle had a slope on most of the eastern side of the unnamed road. In multiple places, silt fence below the road had failed. These silt fences had not been repaired on May 16, 2018.

75. At the time of the EPA Ledgemere Inspection, the slope below the unnamed road was unstabilized with erosion channels present. The slope was still unstabilized on May 16, 2018.

76. At the time of the EPA Ledgemere Inspection, at the southern section of the unnamed road, a dirt road led south downhill to the stormwater basin. Near the north end of the dirt road, a drainage path led off the dirt road and downhill. The drainage path led into the woods towards the unnamed stream. The drainage path was eroded several inches deep. There were no erosion controls above or along the drainage path.

77. During the EPA Ledgemere Inspection, the EPA inspector pointed out to a site representative the failed silt fences and the need for erosion control below the unnamed road.

Lakeview Estates

78. On May 16, 2017, Lakeview Estates Respondents submitted a NOI to EPA for coverage under the 2017 CGP for the Lakeview Estates Site, and coverage under the permit was authorized starting May 30, 2017 with a tracking number of MAR1000J1

79. Prior to May 30, 2017, Lakeview Estates Respondents began construction activities at the Lakeview Estates Site including installing the construction site access road, clearing land, and removing trees and stumps. Lakeview Estates Respondents continued construction activities on the site after May 30, 2017.

80. Accordingly, Lakeview Estates Respondents have either directed or participated directly in construction activities at the Lakeview Site, including grubbing, clearing, grading, filling, and excavation activities, that have resulted in the disturbance of greater than one acre of total land area.

81. Since May 30, 2017, Lakeview Estates Respondents have had operational control over the construction plans and specifications for the Lakeview Estates Project, including the ability to make modifications to those plans and specifications.

82. Since at least May 30, 2017, Lakeview Estates Respondents had day-to-day operational control of the construction activities at the Lakeview Estates Site that are necessary to ensure compliance with the 2017 CGP, including the development of a SWPPP for the Lakeview Estates Site and the installation and maintenance of erosion control measures.

83. Accordingly, Lakeview Estates Respondents are “operators” at the Lakeview Estates Site as defined at Appendix A the 2017 CGP and 40 C.F.R. § 122.2.

84. The construction activities at the Lakeview Estates Site are “industrial activities” as defined at 40 C.F.R. § 122.26(b)(14)(x).

85. These construction activities at the Lakeview Estates Site have resulted in the discharge of “storm water associated with industrial activity” within the meaning of 40 C.F.R. 122.26(c).

86. The stormwater discharges from the Lakeview Estates Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

87. The stormwater discharges from the Lakeview Estates Site are conveyed through ditches, culverts, swales, gullies, and channels through disturbed areas of the Site and are contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity. The stormwater discharges from the Lakeview Estates Site flow offsite into nearby Silver Lake.

88. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity contained in the stormwater discharges from the Site are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The stormwater discharges from the Lakeview Estates Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

89. The ditches, culverts, swales, gullies, and channels at the Lakeview Estates Site are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

90. The stormwater discharges from the Lakeview Estates Site flow offsite into Silver Lake, which flows into the Peters River, which flows into the Blackstone River, which flows into the Seekonk River that flows into Narragansett Bay, which in turn empties into the Atlantic Ocean.

91. Silver Lake, the Peters River, the Blackstone River, the Seekonk River, and the Atlantic Ocean are all “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

92. On May 16, 2018, EPA Region 1 conducted a CWA compliance inspection of the Lakeview Estates Site to evaluate Lakeview Estates Respondents’ compliance with the 2017 CGP (the “EPA Lakeview Estates Inspection”).

93. At the time of the EPA Lakeview Estates Inspection, the northern end of the Lakeview Estates Site contained a large, unstabilized loam stockpile. The stockpile had erosion channels.

94. There was new silt fencing on the eastern side of the stockpile that had signs of flow beyond it, with some sediment deposits.

95. At the time of the EPA Inspection, south of the large loam stockpile were additional large stockpiles with no stabilization other than scattered weed growth.

96. During 2018, inspections were performed of the Lakeview Estates Site, checking the functioning of erosion controls and the need for any new controls. These inspections were documented, and the reports provided to Lakeview Estates Respondents.

97. An inspection report on April 10, 2018 and five subsequent inspection reports until the EPA inspection on May 16 noted the need to stabilize or cover stockpiles on the site.

98. Based on the EPA Maplebrook Commons Inspection, the EPA Ledgemere Inspection, the EPA Lakeview Estates Inspection, the 308 Responses, as well as other information and documents obtained from Respondents and other sources, Complainant has identified the following violations of the CWA, 40 C.F.R. Part 122 and the 2017 CGP:

V. VIOLATIONS:

Failure to Comply with 2017 CGP

99. Paragraphs 1 through 98 above are incorporated by reference as if fully set forth herein.

Maplebrook

100. By failing to ensure that all silt fencing stormwater controls were maintained and/or remained in effective operating condition at the Maplebrook Commons Site in May 2018, Respondents violated Part 2.1.4 of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

101. By failing to immediately install stabilization measures on an unstabilized slope, in areas where construction activities would be temporarily inactive for 14 or more calendar days from at least April 13, 2018 through May 16, 2018, Maplebrook Commons Respondents violated Part 2.2.14(a) of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

102. By failing to complete the installation, modification, or repair of a problem that necessitates a new or replacement control or significant repair no later than 7 calendar days from the time of discovery, for five weeks, Maplebrook Commons Respondents violated Part 5.2.3 of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

Ledgemere

103. By failing to maintain silt fencing sediment controls along perimeter areas of the Ledgemere Site that will receive pollutant discharge from April 10, 2018 through May 16, 2018, Maplebrook Commons Respondents violated Part 2.1.4.c of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

104. By failing to immediately install stabilization measures, in areas where construction activities would be temporarily inactive for 14 or more calendar days from at least April 10 to

May 16, 2018, Ledgemere Respondents violated Part 2.2.14(a) of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

105. By failing to clean up and dispose of construction and domestic wastes in designated waste containers on business days before April 10, 2018, Ledgemere Respondents violated Part 2.3.3.e.iii of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

106. By failing to control runoff from the dirt road, Ledgemere Respondents violated Part 2.2.3 of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

Lakeview Estates

107. By failing to appropriately stabilize stockpiles composed in whole or in part of sediment and or soil that will be unused for 14 or more days from at least April 10, 2018 to May 16, 2018, Lakeview Estates Respondents violated Part 2.2.5.c of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

108. By failing to complete necessary maintenance and complete corrective action for over five weeks, Lakeview Estates Respondents violated Part 4.6.7 and 5.2.3 of the 2017 CGP, and therefore Section 301(a) of the CWA, 33 U.S.C. §1311(a).

VI. PROPOSED CIVIL PENALTY

109. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, et seq., the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19), Respondents are subject to civil penalties of up to \$21,933 per day for each violation that occurred after November 2, 2015, up to a maximum penalty of \$274,159.

110. Complainant is seeking a penalty from Respondents of up to \$21,933 for each day of violation as described above for at least 213 days up to a maximum penalty of \$274,159.

111. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant will take into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violation, or violations, and Respondents' prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondents resulting from the violations, Respondents' ability to pay the proposed penalty, and such other matters as justice may require.

112. The violations alleged represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important to ensuring that stormwater runoff does not contribute to the impairment of water quality to waters of the United States.

113. Prior to any hearing in this matter, Complainant will file a document specifying a proposed penalty for the CWA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules of Practice.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

114. As provided by Section 309(g)(2)(B) of the CWA, and in accordance with 40 C.F.R. § 22.14, Respondents has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondents' written Answer to this Complaint

("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

115. In their Answer, Respondents may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondents intend to place at issue.

116. The original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, must be sent to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: ORC04-6
Boston, MA 02109-3912

117. After the Answer has been filed, the original and one copy of all other documents filed in this action (except for any Consent Agreement and Final Order settling the case) must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

For UPS, FedEx, DHL or other courier, or personal delivery:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

118. Respondents should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Tim Conway, the attorney assigned to represent Complainant in this matter and who is designated to receive service, at:

Tim Conway
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: OES04-3
Boston, MA 02109-3912

119. If Respondents fail to file a timely Answer to this Complaint, they may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

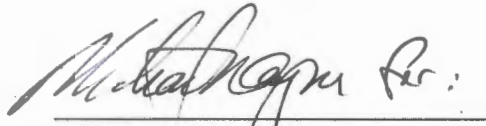
120. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

121. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

VIII. CONTINUED COMPLIANCE OBLIGATION

122. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA shall affect any Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable Federal, State or local law.

Date: 3/14/2019



Karen McGuire, Director,
Office of Environmental Stewardship
U.S. EPA, Region 1

In the Matter of: Fafard Real Estate and Development Corp.
Docket No. CWA-01-2019-0017

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint was sent to the following persons, in the manner specified on the date below:

Original and copy hand-delivered: Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORC04-6
Boston, Massachusetts 02109-3912

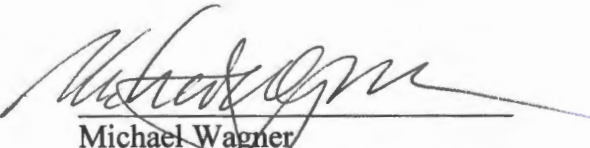
Copy by certified mail, return receipt requested, and a copy of the Part 22 Rules

Richard Terrill
Fafard Real Estate and Development Corp.
120 Quarry Drive
Milford, MA 01757

Copy by first-class mail to:

Pamela Talbot, Enforcement Coordinator
Massachusetts Dep't of Environmental Protection
One Winter Street, 7th floor
Boston, Massachusetts 02108

Dated: 3/14/19


Michael Wagner
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code OES4-3
Boston, MA 02109-3912
(617) 918-1735



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

March 14, 2019

Certified Mail- Return Receipt Requested

Pamela Talbot, Enforcement Coordinator
Massachusetts Department of Environmental Protection
One Winter Street, 7th floor
Boston, Massachusetts 02108

Re: In the Matter of Fafard Real Estate and Development Corp., et al.
Administrative Penalty Complaint
Docket No. CWA-01-2019-0017

Dear Ms. Talbot:

Enclosed please find a copy of the Administrative Complaint referenced above. The Complaint involves three construction project in Uxbridge and Bellingham that included grubbing, clearing, grading, filling, and excavation activities. The Complaint alleges that the Respondents, Fafard Real Estate and Development Corp., Longview Realty Trust, Bellingham Residential Realty, LLC and Uxbridge Multi Family Realty, LLC, violated the Clean Water Act by discharging stormwater associated with construction activity into waters of the U.S. in violation of its 2017 Construction General Permit. Should you wish to consult further on this matter, please call me at (617) 918-1705 or email me at conway.tim@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Conway".

Tim Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1

Enclosure (complaint)