

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Water, Region 3

21 South Putt Corners Road, New Paltz, NY 12561-1620

P: (845) 256-3000 | F: (845) 255-3414

www.dec.ny.gov

**Certified Mail Return Receipt Requested: 7016 0910 0001 4484 9303**

November 5, 2021

Thomas Auringer  
850 Route 28, LLC  
850 Route 28  
Kingston, NY 12401

### **NOTICE OF VIOLATION – CEASE AND DESIST DIRECTIVE**

**Re: 850 Route 28  
Town of Kingston, Ulster County  
Construction Stormwater Inspection  
SPDES: Unpermitted**

Dear Thomas Auringer,

On Friday, October 29, 2021 an inspection of the above referenced site was performed in response to a complaint received by this Department.

At the time of the inspection, over one (1) acre of soil had been disturbed on the site. Projects over one acre require coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001). According to our records, this site has not gained coverage under that permit. Failure to obtain coverage under the SPDES GP-0-20-001 is a violation of Article 17 of the New York State Environmental Conservation Law (ECL).

During the inspection signs of a turbid discharge were noted. Sediment was deposited upon vegetation in an apparent flow path to a cut in a berm to Pond D. The water quality in ponds B, C, D, E, and F were indicative of pollution from discharges from stormwater runoff related to construction activities. Additionally, oil was visible on the surface of Pond B. This is a violation of Article 17 of ECL.

Additionally, a lack of erosion and sediment controls was noted at the site. This has led to a violation of water quality standards. Proper erosion and sediment controls must be installed at the site immediately to prevent any future violations and contraventions of New York State Water Quality Standards.

Please be advised that violations of the ECL are subject to penalties of up to \$37,500 per day per violation. These violations will be referred to our Office of General Council for appropriate enforcement action.

**This Department directs you to immediately Cease and Desist all construction activity at the site, exclusive of that work necessary to correct erosion and sediment control measures and prevent the contravention of the Water Quality Standards, until this Department notifies you in writing that the Cease and Desist directive has been lifted. This also excludes any remediation necessary due to**



Department of  
Environmental  
Conservation

**improper erosion and sediment controls. Failure to comply with this Cease and Desist directive will result in additional enforcement action by this Department.**

A Notice of Intent (NOI) to gain coverage under the GP-0-20-001 must be submitted for the project. The completed NOI must be submitted to the address at the top of the form and a copy sent to this Office. The NOI can be obtained at:

<https://www.dec.ny.gov/chemical/43133.html>.

If you have any questions regarding this inspection, please contact me at (845) 255-3760 or by email at [douglas.upright@dec.ny.gov](mailto:douglas.upright@dec.ny.gov).

Best Regards,

A handwritten signature in black ink, appearing to read 'D. Upright', written in a cursive style.

Douglas J. Upright, P.E.  
Assistant Engineer, Division of Water

Attachments

ec:   Natalie Browne, NYSDEC  
      Manju Cherian, P.E., NYSDEC  
      Halina Duda, P.G., NYSDEC  
      Brian Drumm, NYSDEC  
      Town of Kingston



NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER



Construction Stormwater Inspection Report for SPDES General Permit GP-0-20-001

Project Name and Location: _____  Municipality: _____ County: _____	Date: _____	
	Weather: _____	
	Permit # (if any): <b>NYR1</b>	
	Entry Time: _____	Exit Time: _____
Name of SPDES Permittee: _____ Contacted: Yes <input type="checkbox"/> No <input type="checkbox"/>	Inspection Type: <input type="checkbox"/> NOT <input type="checkbox"/> Compliance <input type="checkbox"/> Referral <input type="checkbox"/> Complaint	
On-site Representative(s) and Company(s): _____		
Phone Number(s): _____		

**General Permit Requirements**

- |    | <u>Yes</u>               | <u>No</u>                | <u>N/A</u>               |  |
|----|--------------------------|--------------------------|--------------------------|--|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Does the project have permit coverage (if required)?                                   |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is a copy of the General Permit available on site?                                     |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is a copy of the MS4 SWPPP Acceptance Form available on site?                          |
| 4. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is a current copy of the signed SWPPP retained at the construction site?               |
| 5. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is a copy of the signed NOI & Acknowledgment Letter retained at the construction site? |
| 6. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was written authorization issued for any disturbance greater than 5 acres?             |

**Inspected:** ☐ Y ☐ N

Citation

I.E. & II. B.1  
II.C.2.  
II.C.2.  
II.C.2.  
II.C.2.  
II.C.3.

**SWPPP General Requirements**

- |     | <u>Yes</u>               | <u>No</u>                | <u>N/A</u>               |  |
|-----|--------------------------|--------------------------|--------------------------|--|
| 7.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is the SWPPP current (accurate Permittee information, reflect current project)?  |
| 8.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | SWPPP identifies potential sources of pollutants in runoff   |
| 9.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | SWPPP identifies Trained Contractor.   |
| 10. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Contractor/Subcontractor certification statements have been signed.  |
| 11. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | SWPPP is signed by responsible corporate officer, general partner, proprietor, principal executive officer, ranking elected official, or duly authorized representative. |

**Inspected:** ☐ Y ☐ N

Citation

II.E. & III.A.4  
III.A.2  
III.A.6.  
III.A.6.  
VII.H.2.

**Recordkeeping**

- |     | <u>Yes</u>               | <u>No</u>                | <u>N/A</u>               |   |
|-----|--------------------------|--------------------------|--------------------------|---|
| 12. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Does Trained Contractor have current certification card?  |
| 13. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are self-inspections performed at permit-required frequency? (check the box below)<br><input type="checkbox"/> Daily during periods of soil disturbance by Trained Contractor<br><input type="checkbox"/> Weekly during soil disturbance by Owner/Operator for excepted projects<br><input type="checkbox"/> Weekly for soil disturbances <= 5 acres by Qualified Inspector<br><input type="checkbox"/> Twice weekly for soil disturbances >5acres or if water segment listed in App. C or E<br><input type="checkbox"/> Monthly during periods of temporary stabilization by Qualified Inspector |
| 14. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Do the qualified inspector's reports include the minimum reporting requirements?  |
| 15. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are the qualified inspector's reports signed and retained onsite?   |
| 16. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Do the inspection reports identify deficiencies that are recurring &/or corrective measures that have not been implemented, & include date-stamped color photos   |

**Inspected:** ☐ Y ☐ N

Citation

VII.O.  
IV.B.1.  
IV.C.1.  
IV.C.2.a.  
IV.C.2.b.&e.  
IV.C.2.c  
IV.C.4.  
IV.C.6.  
IV.C.4.

## **Visual Observations**

- |     | <u>Yes</u>               | <u>No</u>                | <u>N/A</u>               |  |
|-----|--------------------------|--------------------------|--------------------------|--|
| 17. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are all erosion and sediment control measures installed properly?                                      |
| 18. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are all erosion and sediment control measures being maintained properly?                               |
| 19. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Have stabilization measures been implemented in inactive areas per Permit?                             |
| 20. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Are post-construction SMPs constructed/installed correctly?  |
| 21. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Has final site stabilization been achieved and temporary E&SC measures removed prior to NOT submittal? |
| 22. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Was there a discharge from the site on the day of inspection?  |
| 23. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Is there evidence that a discharge caused or contributed to a violation of water quality standards?    |

**Inspected:** ☐ Y ☐ N

### **Citation**

IV.C.4.g.

IV.C.4.f.

I.B.1.b.

IV.C.4.i.

V.A.2.

I.B.1.e. & f.

ECL 17-0501, &  
6 NYCRR 703.2, &  
GP-0-20-001: I.B.

## **Water Quality Observations**


Describe the discharge(s): location, source(s), impact on receiving water(s), etc.

Describe the quality of the receiving water(s) both upstream and downstream of the discharge

Describe any other water quality standards or permit violations

## **Additional Comments**

☐ Photographs attached

<b>Overall Inspection Rating:</b> <input type="checkbox"/> Satisfactory <input type="checkbox"/> Marginal <input type="checkbox"/> Unsatisfactory	
<b>Name/Agency of Lead Inspector:</b>	<b>Signature of Lead Inspector:</b> 
<b>Names/Agencies of Other Inspectors:</b>	



**NYSDEC Inspection Photo Log  
850 Route 28  
Town of Kingston, Ulster County  
SPDES Permit ID: Unpermitted  
Inspection Date: 10/29/2021**



**Photo 1: Turbidity in Pond C**



**Photo 2: Turbidity and Oil in Pond B. Recently filled area adjacent to Pond B.**





**Photo 3: Turbidity in Pond D and E.**



**Photo 4: Cut in berm to Pond D with signs of turbid discharge.**





**Photo 5:** Mine floor from southern end. Previously forested area in center cleared.



**Photo 6:** Disturbed area on South side of entrance to Mine floor.





**Photo 7:** Disturbance near mine floor entrance from south of entrance.



**Photo 8:** Disturbance south of mine floor entrance.





**Photo 9:** Fill Placed in Pond B and on bank of Pickerel Pond.



**Photo 10:** Fill placed on bank of Pond B.





**Photo 11:** Disturbance along eastern side of pickerel pond.



**Photo 12:** Material Stockpiles with no erosion controls.





**Photo 13:** Failed Silt fence and northern end of site disturbance.



**Photo 14:** Large fill section from western bank of Pond B.





**Photo 15:** Fill Section west of building and trailer.



**Photo 16:** Fill Placed on bank of Pickarel Pond.