



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8
1595 Wynkoop Street
Denver, Colorado 80202

2012 AUG 17 PM 2: 13

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2012-0023, NDPDES No. NDR103992

FILED
EPA REGION VIII
RECORDING CLERK

Smithco, Inc. ("Respondent") is a "person," within the meaning of section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 69197-9000
In the Matter of: Smithco, Inc.
Docket No: CWA-08-2012-0023

Attached is an "Expedited Settlement Offer Deficiencies Form" ("Form"), which is incorporated by reference. Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under section 402 of the Act, 33 U.S.C. § 1342, and discharged pollutants before obtaining coverage under this permit.

This Agreement settles the EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in the Form. The EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or federal statute, regulation, or permit. The EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. The EPA has determined this Agreement to be appropriate.

The EPA finds, and Respondent admits, that Respondent is subject to section 301(a) of the Act, 33 U.S.C. § 1311, and that the Act applies to any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the deficiencies specified in the Form.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Regional Judicial Officer, unless a petition to set aside the Order approving this Agreement is filed by a commenter pursuant to section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), or a hearing is requested under section 309(g)(5) of the Act, 33 U.S.C. § 1310(g)(5).

The EPA is authorized to enter into this Consent Agreement ("Agreement") under the authority vested in the Administrator of the EPA by section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$5,450.00 Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) request a hearing pursuant to section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) file an appeal pursuant to section 309(g)(8) of the Act, 33 U.S.C. § 1319(g)(8).

APPROVED BY EPA:

Gwen Campbell
Acting Chief, NPDES Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

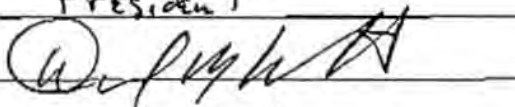
Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondent certifies that, within ten (10) days of receiving notice from the EPA that this Agreement is effective (the effective date is thirty (30) days from the date it is signed by the Regional Judicial Officer), Respondent shall submit a bank, cashiers or certified check, with case name and docket number noted, for the amount specified above payable to the "Treasurer, United States of America," via certified mail, to:

Kimberly Rachel Welch Date: 8/17/12

David Rhee for JHE Date: 8/17/12

APPROVED BY RESPONDENT:

Name (print): Daniel B. Smith  
Title (print): President  
Signature:   
Date: 8-16-2012

ORDER APPROVING AGREEMENT:

Having determined that this Agreement is authorized by law,  
IT IS SO ORDERED:

\_\_\_\_\_ Date \_\_\_\_\_  
Hon. Elyana R. Sutin  
Regional Judicial Officer

**Expedited Settlement Offer Worksheet  
Deficiencies Form**

Consult instructions regarding eligibility criteria  
and procedures prior to use

version 10.3.4



<b>LEGAL NAME AND MAILING ADDRESS OF OPERATOR</b>		<b>Telephone Number</b>	<b>NPDES Permit Number</b>
1	Dan Smith / President - Smithco, Inc. 2501 13th Avenue Southwest, Suite # 208 Fargo, ND 58103	701-219-0872	NDR103992
		Inspector Name:	David Gwisdalla
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Dan Smith
		Exit Interview time:	17:10
		Date:	05/23/2012
<b>LOCATION AND ADDRESS OF SITE</b>			
2	Center for Scouting 1931 42nd Street South Fargo, ND (Cass County) 58102		

<b>FACILITY DESCRIPTION / CONTACT NAMES</b>	
<b>Name of Site Contact (ESO Worksheet recipient):</b>	Dan Smith, President of Smithco, Inc.
<b>Name of Authorized Official (40 CFR 122.22):</b>	Dan Smith, President
<b>Inspection Date:</b>	05/23/2012
<b>Start Construction Date:</b>	07/17/2011
<b>Estimated Completion Construction Date:</b>	06/30/2012
<b>If Unpermitted, Number of Months Unpermitted:</b>	N/A
<b>Name of Receiving Water Body (Indicate whether 303(d) listed):</b>	City of Fargo MS4, then to the Red River
<b>Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:</b>	3.63   3.63
<b>Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?</b>	No

PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficiencies	Dollar Amount	Total
3	Operator unpermitted for one month (# months unpermitted equals number of violations). Discharge without a permit.	CWA 301	No	1	\$500.00 =	\$500
<b>SWPPP REVIEW</b>						
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)	ND CGP I.C.1			\$5,000.00 =	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)	ND CGP I.C.1			\$75.00 =	
6	SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc.	ND CGP II.C			\$250.00 =	
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control	ND CGP II.C			\$500.00 =	
8	SWPPP does not have site description, as follows:					
A	Nature of activity in description	ND CGP II.C.1.a			\$100.00 =	
B	Intended sequence of major activities	ND CGP II.C.1.c			\$100.00 =	
C	Total disturbed acreage	ND CGP II.C.1.b			\$100.00 =	
D	General location map	EPA CGP 3.3.B.4			\$100.00 =	
E	Site map	ND CGP II.C.1.f			\$500.00 =	

	F	Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation)	location of the equipment staging area). Updated: Required corrective actions were addressed in Smithco's response.	ND CGP II.C.1.I.1-6	No	5	X	\$50.00	=	\$250
	G	Location/description industrial activities, like concrete or asphalt batch plants		ND CGP II.C.1.I.7				\$500.00	=	
9		SWPPP does not:								
	A	Describe all pollution control measures (e.g. BMPs)		ND CGP II.C.2				\$750.00	=	
	B	Describe sequence for implementation	Inspection report finding number 3: "The site updated SWPPP Plan, dated July 18, 2011, was reviewed after the inspection. The SWPPP Plan does not describe the erosion and sediment controls or their timing for each major phase of construction." Updated: No further action is required by Smithco.	ND CGP III.C.3	No	1		\$250.00	=	\$250
	C	Detail operator(s) responsible for implementation		ND CGP II.C.2.a				\$250.00	=	
10		SWPPP does not describe interim stabilization practices		ND CGP II.C.3.b				\$250.00	=	
11		SWPPP does not describe permanent stabilization practices		ND CGP II.C.3.b				\$250.00	=	
12		SWPPP does not describe a schedule to implement stabilization practices		ND CGP II.C.3				\$250.00	=	
13		Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)		EPA CGP 3.4.C.1-3				\$250.00	=	
14		SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		EPA CGP 3.4.C				\$500.00	=	
15		SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed		EPA CGP 3.4.C				\$500.00	=	
16		SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		EPA CGP 3.4.C				\$500.00	=	
17		SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		ND CGP II.C.3.a				\$500.00	=	
18		SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		ND CGP II.C.3.b				\$250.00	=	
19		SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		ND CGP II.C				\$500.00	=	
20		SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		ND CGP II.A				\$500.00	=	
21		SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		ND CGP II.C				\$500.00	=	
22		Endangered Species Act documentation is not in SWPPP		EPA CGP 3.7				\$500.00	=	
23		Historic Properties (Reserved)								

24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)	Inspection report finding number 1: "A copy of the notice of intent (NOI), the State's permit coverage letter, the current stormwater pollution prevention (SWPP) plan and a copy of the permit were not available at the time of the Environmental Protection Agency's (EPA's) inspection." Updated: Smithco provided a copy of the NOI that was in misplaced in the SWPPP folder.	ND CGP III.B	No	0		\$250.00	=	
25	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)		EPA CGP 3.9				\$750.00	=	
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		EPA CGP 3.9				\$250.00	=	
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		ND CGP IV.A.5				\$500.00	=	
28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under 28 as 1 violation)	Inspection report finding number 4 (without photo numbers): "Based upon the May 23, 2012 field observations by the EPA and State inspectors, the SWPP Plan site map also does not reflect current activities at the site. The site map also needs to be updated to illustrate these changes, such as the addition of another vehicle track-out control pad, soil stockpile, erosion caused by the roof drain, and the removal or replacement of BMPs on-site..." Updated: Required corrective actions were addressed in Smithco's response.	ND CGP II.C.7.c	No	4	X	\$50.00	=	\$200
29	Copy of SWPPP not retained on site	Inspection report finding number 1: "A copy of the notice of intent (NOI), the State's permit coverage letter, the <u>current</u> stormwater pollution prevention (SWPP) plan and a copy of the permit were not available at the time of the Environmental Protection Agency's (EPA's) inspection... An outdated and unsigned SWPP Plan (dated July 15, 2011) was maintained on-site. A more recent/updated copy of the SWPP plan, dated July 18, 2011, was provided by Smithco to the NDDH after its August 17, 2011 inspection. The updated SWPP plan was not on-site during the EPA's inspection." Updated: Smithco provided documentation stating that the current SWPPP (dated July 18, 2011) was on-site but misplaced in the SWPPP folder; Smithco also provided a copy of the SWPPP. While no further action is required, the deficiency for not having the SWPPP available on-site was retained.	ND CGP II.C.7.a	No	1		\$500.00	=	\$500
	A SWPPP not made available upon request		ND CGP II.C.7.b				\$500.00	=	
30	SWPPP not signed/certified		ND CGP II.C.7.a				\$500.00	=	
<b>Subtotal SWPPP Deficiencies</b>									<b>\$1,200</b>
<b>INSPECTIONS</b>									

31	Inspections not performed and documented at least once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).	Inspection report finding number 5: " Per the site self-inspection records, the last site self-inspection was completed on August 24, 2011. No self-inspections were conducted and documented after that date. Required self-inspections not documented and/or missed by Smithco include 10 missed self-inspections (between July 17, 2011 and May 23, 2012).* Updated: Smithco provided additional inspection records for January 2, 2012, April 16, 2012, May 5, 2012 and May 14, 2012. It was also stated the site was frozen between November 26, 2011 and April 20, 2012. With the additional records and information on site conditions, the new total number of missed inspections is seven.	ND CGP III.A.1	No	7	\$250.00	=	\$1,750
	No inspections conducted and documented (if True, then leave elements 32-39 blank)				FALSE	True or False		
	Number of Inspections expected if performed every 7 days:	44						
	Number of Inspections expected if performed bi-weekly:	22						
	If known, number of days of rainfall of >0.5"	2						
32	Inspections not conducted by qualified personnel		ND CGP II.C.2.a			\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		EPA CGP 3.10.E.			\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		EPA CGP 3.10.E.			\$50.00	=	
35	Discharge locations are not observed and inspected		EPA CGP 3.10.E.			\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		EPA CGP 3.10.E.			\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		EPA CGP 3.10.E.			\$50.00	=	
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)		ND CGP III.A.2			\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		EPA CGP 3.10.G			\$50.00	=	
<b>Subtotal Inspections Deficiencies</b>								<b>\$1,750</b>
<b>AVAILABILITY OF RECORDS</b>								
40	Sign/notice not posted		EPA CGP 3.12.B			\$250.00	=	
	A Does not contain copy of complete NOI		EPA CGP 3.12.B			\$50.00	=	
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		EPA CGP 3.12.B			\$50.00	=	
<b>Subtotal Records Deficiencies</b>								<b>\$0</b>
<b>BEST MANAGEMENT PRACTICES</b>								
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		ND CGP II.C.4.b			\$500.00	=	
42	Control measures are not properly:	Inspection report finding number 6; items						

A Selected, installed and maintained	<p>(without photo numbers):</p> <p>*The following BMP deficiencies were observed: a) Portions of the silt fence was not installed or maintained correctly; b) Several inlet protection devices were in need of maintenance[*]... e) Vehicle entrance stabilization track-out pad was ineffective and needed to be refreshed and track-out in the street needs to be cleaned; ... f) [Removed from consideration] The construction concrete washout location was inappropriate. The concrete washout appeared to have been conducted along curb without controls; g) Runoff from the building's roof caused rills in the unprotected soil, which flowed to a storm drain inlet off-site; ...</p> <p>*Deficiencies noted in the inspection, which discharge to the on-site retention pond were removed from consideration for the settlement (e.g., items c, d, and h). Similarly, in the case of item b, only one inlet protection device was included in the deficiency count. Updated: Based upon information from Smithco, the concrete washout (Item f) was not attributable to the site. Required corrective actions were addressed in Smithco's response.</p>	ND CGP II.C.3.c	1	4	X	\$500.00	=	\$2,000	
B Maintenance not performed prior to next anticipated storm event	<p>(count each failure to select, install, maintain each BMP as one violation)</p>	ND CGP II.C.5				\$250.00	=		
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	ND CGP II.C.3.d				\$500.00	=		
44	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)	ND CGP II.C.2.b			X	\$500.00	=		
45	Stabilization measures are not initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation	ND CGP II.C.3				\$500.00	=		
	*Exceptions:								
	(a) Snow or frozen ground conditions								
	(b) Activities will be resumed within 14 days								
	(c) Arid or Semi-arid areas (<20 inches per								
46	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained	ND CGP II.C.3				\$1,000.00	=		
A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries	ND CGP II.C.3				\$1,000.00	=		
B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more	ND CGP II.C.3				\$500.00	=		
47	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)	ND CGP II.C.3				\$500.00	=		
A	Sediment not removed from sediment trap when design capacity reduced by 50% or more	ND CGP II.C.3				\$500.00	=		
<b>Subtotal BMP Deficiencies</b>								<b>\$2,000</b>	
<b>SMALL BUSINESS EVALUATION</b>									
48	Is the Owner/Operator a Small Business?	Per Mr. Dan Smith, the President of				Yes			

A *small business* is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.

Smithco, Inc., the company has five employees

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Total Expedited Settlement: **\$5,450**

\* Requires Corrective Action

\*\* NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE OF PROPOSED EXPEDITED SETTLEMENT AGREEMENT AND  
OPPORTUNITY TO COMMENT**

**Action:** The EPA is providing notice of the opportunity to comment on a proposed expedited settlement agreement. The agreement relates to alleged violations of a Clean Water Act (CWA) storm water permit at the Center for Scouting, at 1931 42<sup>nd</sup> Street South, Fargo, North Dakota, which is being constructed by Smithco, Inc. (Smithco). The corporate address of Smithco is 2501 13<sup>th</sup> Avenue Southwest, Suite #208, Fargo, ND 58103.

**Summary:** The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (the respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is forty days after issuance of this notice.

The EPA and Smithco have agreed to enter into an expedited settlement agreement to resolve the EPA's claims that Smithco violated the requirements listed below. Smithco has agreed to pay a civil penalty of \$5,450.00 to resolve its civil penalty liability for these claims. Pursuant to section 309(g)(4) of the CWA and 40 C.F.R. § 22.45, the EPA hereby notifies the public of the opportunity to comment on this proposed penalty assessment.

EPA Docket Number for proposed expedited settlement: CWA-08-2012-0023.

Alleged violations: (1) Discharging storm water pollutants in violation of a permit, (2) Failing to maintain a complete storm water pollution prevention plan, (3) failing to conduct required self-inspections, and (4) failing to maintain best management practices to minimize discharges of sediment and other pollutants into waters of the United States.

**PUBLIC COMMENTS**

Written comments on the expedited settlement agreement are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice. Written comments submitted by the public as well as information submitted by respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at:  
<http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Please submit written comments to:

Tina Artemis (8RC)  
Regional Hearing Clerk  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Telephone: (303) 312-6765

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the expedited settlement agreement or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above.