

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 7, 901 North 5th Street, Kansas City, KS 66101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2006-0260, NPDES No.:NER-104050 JAN 24 AM 11: 06

Kubr Construction, 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.

Attached is an "Expedited Settlement Offer Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, 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.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over 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.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of 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 \$10,225. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C.

§ 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

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. More than 40 days have elapsed since the issuance of public 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 EPA that the Agreement is effective thirty (30) days from the date it is signed by the Appropriate Official, 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:

> U.S. EPA, Region 7 P.O. Box 371099M Pittsburgh, PA 15251

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. 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 of any other federal statute or regulation. EPA does not waive its right to issue REGIONAL HEARING CLERK

Date: /// -/

Date January 24, 2007

a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Presiding Officer unless a petition to set aside the Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the Act, 33 U.S.C. $\S 1319(g)(4)(C)$, and Part 22.

Date: William A! Director Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Signature:

notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law,

IT IS SO ORDERED:

Robert J. Patrick

Regional Judicial Officer

Expedited Settlement Offer Worksheet

Deficiencies Form

Consult instructions regarding eligibility criteria
and procedures prior to use





	LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number				
1	Kubr Construction Company		402-423-8821	NER104050				
	1000 West Rokeby Rd. Lincoln, NE 68523		Inspector Name: Inspector Agency:	Pete Green US EPA				
			Entrance Interview Conducted:	Yes				
	<u> </u>		Exit Interview Conducted:	Yes				
	LOCATION AND ADDRESS OF SITE		Exit Interview given to:	Dan Kubr				
2	Scott's Creek Subdivision South 68th & Hickman Road Hickman, NE		Exit Interview time:	11:00 Date: 06	/29/2006			
					_			
	FACILITY DESCRIPTION / CONTACT NAMES							
	Name of Site Contact (ESO World							
	Name of Authorized Official	(40 CFR 122.22):	Dan Kubr					
		Inspection Date	06/29/2006					

	FACILITY DESCRIPTION / CONTACT NAMES	
	Name of Site Contact (ESO Worksheet recipient):	Dan Kubr
	Name of Authorized Official (40 CFR 122.22):	Dan Kubr
1	inspection Date:	06/29/2006
1 !	Start Construction Date:	10/01/2005
!	Estimated Completion Construction Date:	
	If Unpermitted, Number of Months Unpermitted:	
	Name of Receiving Water Body (Indicate whether 303(d) listed):	Unnamed tributary of Hickman Branch
1 l	Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:	28.00
	Has Operator Requested Rainfall Erosivity or TMDL Walver per 44 CFR 122.26(b)(15)?	

	PERMIT COVERAGE	Notes	Citation Reference**	State Citation Reference***	R C A*	No. of Deficien- cies	•	Dollar Amount	Tota
3	Operator unpermitted formonths (# months unpermitted equals number of violations)		CWA 301	CNR 119-2				\$500.00	=
	SWPPP REVIEW								
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	NEGP D(1)(a)	1			\$5,000.00	=
5	SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	NEGP D(1)(b)	Yes	1	X	\$75.00	= \$75
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		CGB 3.1.B	N/A					
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control		CGP 3.3.A	N/A	44.				
8	SWPPP does not have site description, as follows:								
Ī	A Nature of activity in description	그 사람이 가장 그 사람이 되었다.	CGP 3.3.B.1	N/A					
Ī	B Intended sequence of major activities	the state of the state of the state of	CGP 3.3.B.2	NEGP D(2)(b)	Yes	1	x	\$100.00	= \$100
ľ	C Total disturbed acreage	5.ª	CGP 3.3.B.3	NEGP D(2)(a)	1		Н	\$100.00	
- 1	D General location map		CGP 3.3.B.4	NEGP D(2)(a)	_		H	\$100.00	
ı	E Site map		CGP 3.3.C	NEGP D(2)(a)	-	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	! 	\$500.00	
Ī	F Site map does not show drainage patterns,		CGP 3.3.C.1-8	NEGP D(2)(a)	$\overline{}$		1	\$50.00	
- 1	slopes, areas of disturbance, locations of major		0.0.0	11201 5(2)(0)				400.00	1
	controls, structural practices shown.				Ť.		1		
- }	stabilization practices, offsite materials, waste,	The state of the s					lí		1
ŀ	borrow or equipment storage ageas, surface					52	1		
	waters, discharge points, areas of final				1 1				
	stabilization (count each omission under 8F as 1 violation)	•	1		15	200		ľ	
	G Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D	N/A			$\dagger \dagger$		
9	SWPPP does not:								
	A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A	NEGP D(3)	Yes	1	×	\$750.00	
	B Describe sequence for implementation		CGP 3.4.A	NEGP D(2)(b)	Yes	1	×	\$250.00	= \$250
Ī	C Detail operator(s) responsible for implementation		CGP 3.4.A	N/A					1
10	practices		CGP 3.4.B	NEGP D(3)(c)	Yes	1	×	\$250.00	= \$250
11	practices		CGP 3.4.B	NEGP D(3)(c)	Yes	., 1	x	\$250.00	= \$250
12	SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	NEGP D(3)(b)	Yes	1	×	\$250.00	= \$250

	1 		1000004040	Tarra			_		
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)		CGP 3.4.C.1-3	N/A					
14	SWPPP does not have description of structural		CGP 3.4.D	NEGP D(3)(a)			H	\$500.00	=
15	practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CCD 2 4 E	AI/A				_	
15	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water		CGP 3.4.E	N/A					
	discharges that will occur AFTER construction operations have been completed			ļ					
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CGP 3.4.F	N/A	tz.				
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	NEGP D(2)(f)		1	X	\$500.00	= \$500
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		CGP 3.4.H	N/A		John States			
19	SWPPP does not have description of pollutant sources from areas other than construction		CGP 3.4.I	N/A	17	M. H.	Ħ		
	(asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials								
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5	N/A	8 sz. :	s			
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5	N/A					
22	Endangered Species Act documentation is not in SWPPP		CGP 3.7	N/A	2.4	\$ 1. 	T		
23	Historic Properties (Reserved)	-		NA					
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)	333	CGP 3.8	N/A	10.00				
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)		CGP 3.9	NEGP D(4)	3.5	1	X	\$750.00	= \$750
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		CGP 3.9	N/A					
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		CGP 3.10.G	NEGP D(6)		1	×	\$500.00	= \$500
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 under 28 as 1 violation)		CGP 3.11.C	NEGP D(1)(e)	Yes	1	x	\$50.00	= \$50
29	Copy of SWPPP not retained on site		CGP 3.12.A	NEGP D(1)(c)				\$500.00	
30	A SWPPP not made available upon request SWPPP not signed/certified		CGP 3.12.D	NEGP D(1)(d)			†	\$500.00	
	INSPECTIONS						_		
31	Inspections not performed and documented either once every 7 days, or 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	8 months without weekly inspections and after .5 rainfall events	CGP 3.10.A, 3.10.B	NEGP D(5)	Yes	8	×	\$250.00	\$2,000
	areas) (Count each failure to inspect and document as one violation).					1,7%			
<u></u>	No inspections conducted and documented (if True, then leave elements 32-39 blank)			NEGP D(5)	Yes			True or False	TRUE
	Number of Inspections expected if performed every 7 days:		1.0	N/A			Ц		
_	Number of Inspections expected if performed bi- weekly:			N/A	Ш	-			
	If known, number of days of rainfall of >0.5"	<u></u>		NEGP D(5)			Ш		

								_		_	
32		Inspections not conducted by qualified personnel		CGP 3.10.D	N/A			l			
33		All areas disturbed by construction activity or used		CGP 3.10.E	N/A	 		╫		+	
33		All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E	N/A			l			
34		All pollution control measures not inspected to		CGP 3.10.E	NEGP D(5)	 		╅	\$50.00	⇟	
54		ensure proper operation		00. 0.70.2		2	-				
35		Discharge locations are not observed and inspected		CGP 3.10.E	N/A						
36		For discharge locations that are not accessible,		CGP 3.10.E	N/A	2.58		1		\sqcap	
		nearby locations are not inspected				ļ		┸		4	
37		Entrance/exit not inspected for off-site tracking		CGP 3.10.E	NEGP D(5)				\$50.00	-	
38		Site inspection report does not include: date,		CGP 3.10.G	NEGP D(6)			Х	\$50.00	=	
		name and qualifications of inspector, weather	12:	1			l				
		information, location of sediment/pollutant discharge, BMP(s) requiring maintenance,	<u> </u>					ı			
		BMP(s) that have failed, BMP(s) that are	.A			ľ	l '	ı			
		needed, corrective action required including	4.25				. *	1			
		changes/updates to SWPPP and schedule/dates					17.5	1			
		(count each omission under 38 as 1 violation)					J. 91	1			
39		Inspection reports not properly signed/certified		CGP 3.10.G	N/A					T	
		(count each failure to to sign/certify as 1 violation)									
		AVAILABILITY OF RECORDS	<u> </u>		•						
40		Sign/notice not posted		CGP 3.12.B	N/A	T		T	[I	Т	
	A	Does not contain copy of complete NOI		CGP 3.12.B	N/A			1		+	
ı		Location of SWPPP or contact person for	`	CGP 3.12.B	N/A		***************************************				
		scheduling viewing times where on-site location	and the second second				٠.				
		for SWPPP unavailable not noted on sign		1						. L	
		BEST MANAGEMENT PRACTICES	1								
41		No velocity dissipation devices located at		CGP 3.13,F	NEGP D(3)			T	\$500.00	=	
		discharge locations or outfall channels to ensure		1	, ,			П			
		non-erosive flow to receiving water							anon.		
42		Control measures are not properly:	Failure to maintain discharge outlet and	0000000	NEOD B(O)	.,		Ų,	2500.00		**
l	Α	Selected, installed and maintained	silt fence; failure to install triangular silt dikes and curb inlets protection.	CGP 3.13.A	NEGP D(3)	Yes	4	ľ	\$500.00	=	\$2,000
ŀ	В	Maintenance not performed prior to next	dises and curb fracts protection.	CGP 3.6.B	N/A		<u> </u>	╅		+	
L		anticipated storm event									
Γ		(count each failure to select, install, maintain each									
		BMP as one violation								ŝ	
43		When sediment escapes the site, it is not removed	***************************************	CGP 3.13.B	N/A	-		Н		-	
70		at a frequency necessary to minimize off-site		CGF 0.10.D	N/A			l			
44		Litter, construction debris, and construction		CGP 3.13.C	NEGP D(2)(e)	╁		╅	\$500.00	=	
		chemicals exposed to storm water are not						П	***************************************		
		prevented from becoming a pollutant source		1							
		(e.g. screening outfalls, pickup daily, etc.)						L		4	4500
45		Stabilization measures are not initiated as soon as practible on portions of the site where construction		CGP 3.13.D	NEGP D(3)(c)	Yes	1	X	\$500.00	=	\$500
		activities have temporarily or permanently ceased						ı	ŀ		
		within 14 days after such cessation	the state of the s	1							
							***************************************	Ц			
-		*Exceptions: (a) Snow or frozen ground conditions			N/A N/A			Н		4	
ŀ		(b) Activities will be resumed within 14 days			N/A			H		+	
L			•	-							
		(c) Arid or Semi-arid areas (<20 inches per		00000155	NA						A 4.000
46		Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm.		CGP 3.13.E.1	NEGP D(3)(e)	Yes	1	П	\$1,000.00	=	\$1,000
,				I				H			
		or 3600 cubic ft. storage per acre drained								- 1	
		or 3600 cubic ft. storage per acre drained	E ₁			Ш		Ш		ᆚ	
-	A	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller		CGP 3.13.E.2	NEGP D(3)(a)	Yes	1	$\ \cdot\ $	\$1,000.00	=	\$1,000
-	A	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion		CGP 3.13.E.2	NEGP D(3)(a)	Yes	. 1		\$1,000.00	z	\$1,000
-	A	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller		CGP 3.13.E.2	NEGP D(3)(a)	Yes	1		\$1,000.00	=	\$1,000
-	A	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or			, , , ,	Yes	1		\$1,000.00	=	\$1,000
47	A	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	N/A	Yes	. 1				\$1,000
47	В	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more Common Drainage less than 10 acres does not			, , , ,	Yes	***		\$1,000.00 \$500.00		\$1,000
47	В	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	N/A	Yes	1				\$1,000
47	В	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more 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		CGP 3.6.C	N/A	Yes	. 1				\$1,000
47	В	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more Common Drainage less than 10 acres does not have sediment traps, sift fences, vegetative buffer strips, or equivalent sediment controls for all down		CGP 3.6.C	N/A	Yes					\$1,000
47	В	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more 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)		CGP 3.6.C CGP 3.13.E.3	N/A NEGP D(3)(a)	Yes					\$1,000
47	A B	or 3600 cubic ft. storage per acre drained Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more 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		CGP 3.6.C	N/A	Yes					\$1,000

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48	Is the Owner/Operator a Small Business?						
	A small business is defined by EPA's Small			4.7			
	Business Compliance Policy as: "a person,						
	corporation, partnership, or other entity that						
	employs 100 or fewer indiviudals (across all						
1 1	facilities and operations owned by the small	4	1				
	business)." The number of employees should					1 1	
	be considered as full-time equivalents on an					1	
	annual basis, including contract employees	The second secon					
	(see 40 CFR 372.3). A full time employee unit						
	is 2000 hours worked per year.						
					al Expedited		\$10.225

* Requires Corrective Action
** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm
*** Authorization to Discharge under the state of Nebraska NPDES, NPDES Permit Number NER100000, Issued by NDEQ on August 1, 2002 - http://www.ndeq.state.ne.us

IN THE MATTER OF Kubr Construction, Inc., Respondent Docket No. CWA-07-2006-0260

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to Attorney for Complainant:

Kristina Kemp Assistant Regional Counsel Region VII United States Environmental Protection Agency 901 N. 5th Street Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dan Kubr Registered Agent Kubr Construction, Inc. 1000 West Rokeby Road Lincoln, Nebraska 68523

Dated: 124/

Kathy Robinson

Hearing Clerk, Region 7