



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2009-0075, NPDES No.:KSR-104545

09 AUG 24 PM 1:18

ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

Heartland Midwest, LLC ("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 \$3,150. 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 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  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

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 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. § 1319(g)(4)(C), and Part 22.

APPROVED BY EPA:

William A. Spratlin Date: 8/20/09  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): R. Lee Chapman  
Title (print): Member  
Signature: R. Lee Chapman Date: June 16, 2009

More than 40 days have elapsed since the issuance of public 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 L. Patrick Date August 24 2009  
Robert L. Patrick  
Regional Judicial Officer

**Expedited Settlement Offer Worksheet**

**Deficiencies Form**

Consult instructions regarding eligibility criteria and procedures prior to use

KS-S-MCST-0701-1



LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number
1	Heartland Midwest, LLC 15795 S Mahaffie Street, Suite 100 Olathe, KS 66062	913-397-9911	KSR-104545
		Inspector Name:	St Germain
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Jeff Hunt
		Exit Interview time:	12:00 Date: 07/24/2008
LOCATION AND ADDRESS OF SITE			
2	Lauren's Bay Villas, Phase 2 SW 44th and Manamaker Topeka, KS		

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient):	Doug Whitman
Name of Authorized Official (40 CFR 122.22):	
Inspection Date:	07/24/2008
Start Construction Date:	10/01/2007
Estimated Completion Construction Date:	09/01/2008
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	Tributary to West Branch of Shunganunga Creek
Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:	11:00
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	

PERMIT COVERAGE	Notes	Citation Reference**	State Citation Reference***	R C A*	No. of Deficiencies	Dollar Amount	Total
3 Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301	KAR 28-16-153		X	\$500.00	=
<b>SWPPP REVIEW</b>							
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	KSGP Part 7		X	\$5,000.00	=
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	KSGP Part 7		X	\$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.		CGP 3.1.B	KSGP Part 7.2.7		X	\$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		CGP 3.3.A	KSGP Part 7.1	1	X	\$500.00	= \$500
8 SWPPP does not have site description, as follows:	Site map does not show areas of disturbance or equipment storage areas.						
A Nature of activity in description		CGP 3.3.B.1	KSGP Part 7.2.1		X	\$100.00	=
B Intended sequence of major activities		CGP 3.3.B.2	KSGP Part 7.2.1		X	\$100.00	=
C Total disturbed acreage		CGP 3.3.B.3	KSPG Part 7.2.1		X	\$100.00	=
D General location map		CGP 3.3.B.4	KSPG Part 7.2.1		X	\$100.00	=
E Site map		CGP 3.3.C	KSPG Part 7.2.1		X	\$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)		CGP 3.3.C.1-8	KSPG Part 7.2.1	2	X	\$50.00	= \$100
G Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D	N/A				
9 SWPPP does not:							
A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A	KSGP Part 7.2.2		X	\$750.00	=
B Describe sequence for implementation		CGP 3.4.A	KSPG Part 7.2.2		X	\$250.00	=
C Detail operator(s) responsible for implementation		CGP 3.4.A	N/A				



	Number of inspections expected if performed every 7 days:								
	Number of inspections expected if performed bi-weekly:								
	If known, number of days of rainfall of >0.5"								
32	Inspections not conducted by qualified personnel		CGP 3.10.D	N/A				\$50.00	=
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
35	Discharge locations are not observed and inspected		CGP 3.10.E	KSGP Part 7.2.8			X	\$50.00	=
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	KSGP VII p.9			X	\$50.00	=
37	Entrance/exit not inspected for off-site tracking		CGP 3.10.E	N/A					
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)		CGP 3.10.G	KSGP Part 7.2.8			X	\$50.00	=
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G	KSGP Part 7.2.8			X	\$50.00	=
<b>AVAILABILITY OF RECORDS</b>									
40	Sign/notice not posted		CGP 3.12.B	N/A					
A	Does not contain copy of complete NOI		CGP 3.12.B	KSGP Parts 5 & 9.1			X	\$50.00	=
B	Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		CGP 3.12.B	N/A					
<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		CGP 3.13.F	KSGP Parts 7 & 7.2.4			X	\$500.00	=
42	Control measures are not properly:	Failure to install J-hooks in accordance with conditions of permit; failure to install silt fence according to SWPPP; failure to maintain silt fence that was installed.							
A	Selected, installed and maintained		CGP 3.13.A	KSGP Parts 7.1 & 7.2.1		3	X	\$500.00	= \$1,500
B	Maintenance not performed prior to next anticipated storm event (count each failure to select, install, maintain each BMP as one violation)		CGP 3.6.B	KSGP Parts 7.1 & 7.2.1			X	\$250.00	=
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 3.13.B	N/A					
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.)		CGP 3.13.C	KSGP Part 7.2.8			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		CGP 3.13.D	KSGP Part 7.2.3		1	X	\$500.00	= \$500
	*Exceptions:			N/A					
	(a) Snow or frozen ground conditions			N/A					
	(b) Activities will be resumed within 14 days			N/A					
	(c) Arid or Semi-arid areas (<20 inches per			N/A					
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		CGP 3.13.E.1	KSGP Part 7.2.5			X	\$1,000.00	=
A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope		CGP 3.13.E.2	KSGP Part 7.2.5			X	\$1,000.00	=
B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.5			X	\$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)		CGP 3.13.E.3	KSGP Parts 7.1, 7.2.3 & 7.2.4			X	\$500.00	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.5			X	\$500.00	
<b>SMALL BUSINESS EVALUATION</b>									
48	Is the Owner/Operator a Small Business? A <i>small business</i> 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.								
								<b>Total Expedited Settlement:</b>	<b>\$3,150</b>
<p>* Requires Corrective Action  ** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, <a href="http://cfpub.epa.gov/npdes/stormwater/cgp.cfm">http://cfpub.epa.gov/npdes/stormwater/cgp.cfm</a>  *** Kansas Water Pollution Control General Permit and Authorization to Discharge - issued by KDHE on January 2, 2007 - <a href="http://www.kdheks.gov/stormwater/#">http://www.kdheks.gov/stormwater/#</a> CURRENT - Effective</p>									

IN THE MATTER OF Heartland Midwest, LLC, Respondent  
Docket No. CWA-07-2009-0075

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:

Sarah LaBoda  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

R. Lee Chapman, Member  
Heartland Midwest, LLC  
15795 S. Mahaffie Street, Suite 100  
Olathe, Kansas 66062

Dated: 8/24/09

  
Kathy Robinson  
Hearing Clerk, Region 7