



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

SEP 17 2014

Ref: 8ENF-W-NP

CERTIFIED MAIL NO. 7008 3230 0003 0726 0252
RETURN RECEIPT REQUESTED

Mr. Jeffrey C. Nelson
Vogel Law Firm, Ltd.
Registered Agent
CKW Properties, LLP
P.O. Box 1389
Fargo, North Dakota 58107

Re: CKW Properties, LLP; Administrative Order for Compliance under Section 309(a) of the
Clean Water Act
Docket No. **CWA-08-2014-0031**

Dear Mr. Nelson:

This letter concerns the compliance status of construction operations owned by CKW Properties, LLP, at the South Park Commercial Development in Watford City, North Dakota. The U.S. Environmental Protection Agency Region 8 inspected the site on August 6, 2013. On January 14, 2014, the EPA received additional information from Vogel Law Firm, Ltd., which was limited to clarifications as to the ownership status of the site. Based on its review of all available information, the EPA has determined that CKW Properties, LLP, has violated the Clean Water Act (Act). The Act prohibits, among other things, the discharge of any pollutant into navigable waters, except as in compliance with a permit issued pursuant to the Act. *See* 33 U.S.C. § 1311(a).

Enclosed is an Administrative Order for Compliance (Order) issued by the EPA under the authority of section 309(a) of the Act, 33 U.S.C. § 1319(a). Please read the Order carefully. It contains specific requirements and deadlines, and compliance with the Order by CKW Properties, LLP, is mandatory. Your attention is directed to **Paragraphs 30-34** of the Order, which detail specific compliance actions to correct violations and document such corrections. As reflected in Paragraph 28 of the Order, the EPA understands that CKW Properties, LLP, obtained permit coverage for discharges from the site under the North Dakota Department of Health (NDDH) general permit (Permit) in February 2014. The Order requires compliance with all requirements of the Permit, including development and implementation of an adequate storm water pollution prevention plan (SWPP plan) and best management practices (BMPs). To further document compliance with the Permit, the Order also requires documentation of all corrections made since the EPA's inspection to address issues identified therein and quarterly submissions of site inspection reports prepared pursuant to the Permit. If CKW Properties, LLP, is already in full compliance with all requirements of the Permit, including implementing an adequate

SWPP plan and BMPs, then the Order would require only that CKW Properties, LLP, continue complying with such requirements, provide specific documentation of such compliance within 45 days and submit copies of site inspection reports prepared pursuant to the Permit on a quarterly basis until the Order is terminated. The Order is effective immediately.

The Act authorizes the EPA to take appropriate enforcement actions necessary to secure prompt compliance with the Act. Section 309 of the Act, 33 U.S.C. § 1319, authorizes the EPA to seek civil judicial penalties against persons violating an order issued under section 309(a) of the Act. The Act authorizes a variety of possible enforcement actions for violations of the Act, including civil actions and administrative penalty actions. Please be advised that issuance of the Order does not preclude any civil lawsuit or administrative penalty assessment for the violations cited in the Order or for any other violations of the Act.

If you have any questions relating to technical issues raised in the Order, please contact Mr. Michael Boeglin at 303-312-6250. Any questions relating to legal issues should be directed to Ms. Virginia Sorrell at 303-312-6669 or by email at sorrell.virginia@epa.gov. Thank you for your attention to this matter.

Sincerely,



Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: Mr. Marty Haroldson, North Dakota Department of Health

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 17 PM 1:54

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
CKW Properties, LLP) Docket No. **CWA-08-2014-0031**
via Vogel Law Firm, Ltd.)
as Registered Agent) **ADMINISTRATIVE ORDER**
P.O. Box 1389) **FOR COMPLIANCE**
Fargo, ND 58107)
)
Respondent.) Proceeding under Section 309(a) of the
) Clean Water Act, 33 U.S.C. § 1319(a)

STATUTORY AUTHORITY

This Administrative Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Federal Water Pollution Control Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by any person found to be in violation of, *inter alia*, section 301(a) of the Act. This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT AND LAW

1. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the Act prohibits the discharge of any pollutant by any person into navigable waters, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).
2. Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES) program, which is administered by the EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
3. A discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of a NPDES permit. 33 U.S.C. § 1342(p)(3)(A).
4. The regulations further defining requirements for NPDES permits for storm water discharges associated with industrial activity are found at 40 C.F.R. Part 122.
5. Storm water discharges associated with industrial activity subject to permitting requirements include discharges associated with construction activity that disturbs at least five acres of total land area. 40 C.F.R. § 122.26(b)(14)(x).

6. Dischargers of storm water associated with industrial activity must either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).

7. Respondent is a limited liability partnership, established in the State of North Dakota, and doing business in the State of North Dakota. Vogel Law Firm, Ltd. is the registered agent for Respondent.

8. Respondent is a “person” within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the Act and its implementing regulations. 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

9. Respondent owns and is engaged in construction activities at a site known as the South Park Commercial Development and located at U.S. Highway 85 and North Dakota Highway 23 in Watford City, North Dakota (Site).

10. The Site encompasses approximately 50 acres of total land area.

11. Storm water runoff, snow melt runoff, surface runoff, and/or drainage water have left the Site and have flowed into Cherry Creek. *See* Inspection Report (Exhibit A to this Order).

12. Cherry Creek empties into the Little Missouri River.

13. The runoff and drainage referenced in Paragraph 11 are “storm water” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

14. Cherry Creek and the Little Missouri River are “navigable waters” and “Waters of the United States,” as defined by the Act and EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2, definition of “Waters of the United States”.

15. Respondent engaged in construction activities at the Site at all times relevant to this action.

16. Respondent is therefore engaged in an “industrial activity” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).

17. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).

18. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

19. Each storm water discharge from the Site is the “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

20. The North Dakota Department of Health (NDDH) is the state agency authorized to administer the federal NPDES program in North Dakota. The EPA maintains concurrent enforcement authority with delegated states for violations of the Act. 33 U.S.C. § 1342(i).

21. The NDDH issued a general permit for the discharge of storm water under the NPDES, Permit No. NDR10-0000 (the NDDH General Permit). The NDDH General Permit became effective October 12, 2009, and expires September 30, 2014. The NDDH General Permit can authorize storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone), if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the NDDH General Permit by submitting a notice of intent (NOI) for coverage to NDDH.

22. The NDDH General Permit requires, among other things, that Respondent develop and implement an adequate storm water pollution prevention plan (SWPP) plan, conduct regular specified storm water inspections, and implement best management practices (BMPs). BMPs include structural controls (such as storm drain inlet protection) and management practices (such as minimizing any off-site pollutant discharges).

23. Authorized EPA employees entered the Site with the consent of Respondent on August 6, 2013, to inspect it for compliance with the Act and regulations.

24. At the time of the inspection, Respondent did not have any record of having submitted either an NOI for coverage under the NDDH General Permit or an application for an individual permit and had not developed a SWPP plan. Only limited BMPs had been installed and other BMPs were in need of maintenance.

25. At the time of the inspection, as described in detail in the Summary of Findings (Exhibit A to this Order), Respondent's regulated construction activity at the Site was deficient for the following reasons:

- a) Respondent did not obtain permit coverage for regulated construction activity at the Site.
- b) Respondent did not develop a SWPP plan in advance of obtaining permit coverage.
- c) Sediment deposition in Cherry Creek was visible at the point where drainage ditches from the Site had discharged stormwater runoff and surface runoff into Cherry Creek.
- d) Waste management and housekeeping deficiencies were present, including:
 - (1) A spilled substance west of the hotel under construction at the time of inspection; and
 - (2) Concrete washout on the ground and inside a storm drain.

- e) Sediment and erosion control BMPs were inadequate or missing, as follows:
 - (1) Absence of stabilization along the normal wetted perimeter of two drainage ditches within 200 feet from the point of discharge to Cherry Creek;
 - (2) Off-site deposition of sediment from the Site in Cherry Creek due to inadequate BMPs;
 - (3) Unprotected storm drains throughout the Site, with sediment inside of them;
 - (4) Track-out of sediment onto roads throughout the Site;
 - (5) Absence of temporary erosion protection or permanent cover for areas where construction activity had completely or temporarily ceased; and
 - (6) Absence of a sediment basin or equivalent sediment control.

- f) Respondent had no records indicating that any erosion and sediment control site inspections had been performed.

26. The EPA sent the Respondent an inspection report on November 14, 2013, outlining the deficiencies, as displayed in Exhibit A, and required a response within 30 days of the receipt of the inspection report.

27. Respondent provided a response via email on January 14, 2014. The response did not address the deficiencies cited in the inspection report but clarified the property ownership and transfers within the Site.

28. On or about February 18, 2014, Respondent submitted to the NDDH an NOI for coverage under the NDDH General Permit. Permit coverage for the Site became effective seven days after submission of the NOI.

VIOLATION

29. Respondent's discharge of sediment into Cherry Creek constitutes an unauthorized discharge of pollutants into Waters of the United States without a permit, which is a violation of the Act. 33 U.S.C. § 1311(a).

ORDER

Based on the foregoing findings and pursuant to section 309 of the Act, 33 U.S.C. § 1319, it is hereby ORDERED that:

30. Within 15 days of receipt of this Order, the Respondent shall submit to the EPA written notice of the Respondent's intent to comply with the requirements of this Order.

31. Within 45 days of receipt of this Order, Respondent shall submit the following documentation to the EPA and NDDH:

- a) A narrative description, as well as photographs, of all corrections made since the date of EPA's inspection to address sediment, spills, and concrete washout observed in and around the Site as well as sediment in and around Cherry Creek;
- b) A narrative description, as well as photographs, showing that Respondent has developed and implemented BMPs at the Site as required by the NDDH General Permit, including but not limited to, erosion and sediment control measures, stabilization, and good housekeeping practices; and
- c) A SWPP plan, including SWPP plan map, that complies with paragraph II.C of the NDDH General Permit, which can be found online at <http://www.ndhealth.gov/wq/Storm/Construction/NDR10per20091001F.pdf>. The SWPP plan and SWPP plan map must reflect current site management and BMPs, including corrections and BMPs documented under paragraphs (a) and (b) above.

32. Respondent shall immediately implement the SWPP plan and comply with all requirements of the NDDH General Permit.

33. Beginning October 15, 2014, and continuing until this Order is terminated, Respondent shall submit to the EPA copies of site inspection reports prepared pursuant to the NDDH General Permit. Site inspection reports are due to the EPA on a quarterly basis: the reports for January-March are due on April 15; those for April-June, on July 15; those for July-September, on October 15; and those for October-December, on January 15.

34. All submissions by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official. 40 C.F.R. § 122.22.

I certify that CKW Properties, LLP, has complied with all the applicable requirements of the Order for Compliance. I also certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

OTHER PROVISIONS

35. All documents required by this Order to be submitted to the EPA and NDDH shall be submitted by mail to the following addresses:

Michael Boeglin, 8ENF-W-NP
U.S. EPA Region 8
Water Technical Enforcement Program

1595 Wynkoop Street
Denver, Colorado 80202-1129

And

Marty Haroldson, Manager
Waste Water Programs
North Dakota Department of Health
918 East Divide Avenue
Bismarck, North Dakota 58501-1947

36. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.

37. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. Part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or a permit for discharge. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.

38. Nothing in this Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Order or to relieve Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.

39. The Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706 sets forth the scope of such review.

40. This Order shall be effective upon receipt by the Respondent and shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

SEP 17 2014

Date: _____


By: 
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Exhibit A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

NOV 14 2013

Ref: 8ENF-W-NP

CERTIFIED MAIL # 70093410000025986758
RETURN RECEIPT REQUESTED

Vogel Law Firm, Ltd.
Registered Agent
CKW Properties, LLP
P.O. Box 1389
Fargo, ND 58107

Re: Letter of Potential Violation of the Clean Water Act

To Whom It May Concern:

This letter concerns the apparent discharge of storm water into waters flowing into Cherry Creek from property owned, controlled, and/or operated by CKW Properties, LLP (CKW Properties) at the South Park Commercial Development in Watford City, North Dakota. Based on our review of all information currently in our possession, the United States Environmental Protection Agency (the EPA) has information indicating that CKW Properties may be in violation of the Clean Water Act (the CWA). The CWA requires that an authorizing permit be obtained from the North Dakota Department of Health (NDDH), Division of Water Quality prior to the discharge of storm water associated with industrial activity, including construction activity, directly or indirectly into waters of the United States. See 33 U.S.C. §§ 1311 and 1342. As defined under the federal regulations at 40 C.F.R. § 122.2, waters of the United States include certain surface waters, including waters flowing into traditional navigable waters.

On August 6, 2013, inspectors from the EPA and the NDDH conducted an inspection of properties owned by CKW Properties at the South Park Commercial Development and observed evidence of storm water discharges to waters flowing into Cherry Creek, a tributary of the Little Missouri River, a traditional navigable water. These waters are waters of the United States. A copy of the inspection report is enclosed. These activities apparently were performed without authorization under a permit issued by the NDDH and may have impacted a water of the United States. If this is the case, CKW Properties would be in violation of the CWA, 33 U.S.C. § 1311.

The EPA is in the process of making a final determination as to whether CKW Properties is in violation of the CWA. The EPA would like to consider any information that CKW Properties believes demonstrates that the description above is incorrect or that the activities described above and in the inspection reports do not constitute a violation of the CWA. This may include such information as a permit, a permit application and the date it was submitted, or a storm water management plan, other evidence of compliance with a permit, and items described within the "Preliminary Summary of Findings and Corrective Actions" document enclosed in this package. If you would like this information to be considered by the EPA prior to EPA making a final determination, please provide such information within 30 days of receipt of this letter to:

Stephanie Gieck
U.S. EPA Region 8
Mail Code: 8ENF-W-NP
1595 Wynkoop St.
Denver, CO 80202
(303) 312-6362
gieck.stephanie@epa.gov

Please note that the voluntary submission of this information does not preclude the EPA's authority to issue a request for information to you pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.

The EPA invites you to discuss this matter prior to its making a final determination. If it is determined that CKW Properties is not responsible for any violation, no further action will be required. If the EPA makes a final determination that CKW Properties is liable for a CWA violation, the EPA, using its authority under Section 309 of the CWA, 33 U.S.C. § 1319, may issue an order requiring that CKW Properties come into compliance with the CWA. The EPA may also issue a complaint, proposing to assess a civil penalty. Prior to issuance of an order or complaint, the EPA will be open to discussing the terms of compliance and/or penalties with you in order to reach a mutually acceptable agreement. The terms of the agreement, signed by both parties, will be entered into an administrative order on consent (AOC) or, if it involves a penalty, a combined complaint and consent agreement (CCCA). The AOC or CCCA will provide that CKW Properties waives the right to contest the AOC or CCCA and acknowledges that EPA has authority to issue the AOC or CCCA. CKW Properties need not admit liability in the AOC or CCCA. If an agreement is not reached, or CKW Properties declines to enter into early discussions with the EPA, the EPA may unilaterally issue an order and/or complaint. In that event, CKW Properties may contest the order or complaint through a formal adjudicative process.


If CKW Properties is interested in entering into early discussions with the EPA, or has questions regarding this letter of potential violation, please contact Ms. Gieck within 30 days of receipt of this letter. If you are represented by counsel, you may have your attorney contact the EPA enforcement counsel, Brenda Morris, at (303) 312-6891 or morris.brenda@epa.gov.

As stated above, the CWA requires a permit be obtained for operations such as the construction activity undertaken by CKW Properties prior to discharging storm water into waters of the United States. It should be noted that although the EPA has authority to enforce the CWA, the NDDH, Division of Water Quality is the federally-approved permitting authority and any permit will be issued by the NDDH. The web address for information regarding the permit, including application and compliance requirements, is <http://www.ndhealth.gov/wq/storm/StormWaterHome.htm>. Please contact Dallas Grossman, NDDH Division of Water Quality, (701) 328-5242 if you have questions regarding the permit or permit application.

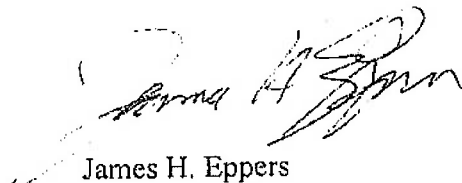
The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to CKW Properties. Enclosed is an information sheet, U.S. EPA Small Business Resources, containing information on compliance assistance resources and tools available to small businesses. SBREFA does not eliminate CKW Properties' responsibility to comply with the CWA.

We appreciate your prompt attention to this matter.

Sincerely,



Gwenette C. Campbell
NPDES Enforcement Unit Chief
Office of Enforcement, Compliance, and
Environmental Justice



James H. Eppers
Supervisory Attorney
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

Enclosures (4)

1. EPA Form 3560
2. Water Compliance Inspection Report
3. Preliminary Summary of Findings and Corrective Actions
4. Inspection Photographs

cc: Karl Rockeman, NDDH
Dallas Grossman, NDDH (email)
Kirk Wold, CKW Properties (email)



United States Environmental Protection Agency
Washington, D.C. 20460

Water Compliance Inspection Report

Section A: National Data System Coding (i.e. PCS)

Transaction Code 1 <input type="text" value="N"/> 2 <input type="text" value="5"/>	NPDES 3 <input type="text" value="un"/> <input type="text" value="per"/> <input type="text" value="mit"/> <input type="text" value="ted"/> 11	yr/mo/day 12 <input type="text" value="1"/> <input type="text" value="3"/> <input type="text" value="0"/> <input type="text" value="8"/> <input type="text" value="0"/> <input type="text" value="6"/> <input type="text" value="17"/>	Inspection Type 18 <input type="text" value="J"/>	Inspector 19 <input type="text" value="J"/>	Fac Type 20 <input type="text" value="2"/>
Remarks 21 <input type="text" value="S"/> <input type="text" value="E"/> <input type="text" value="E"/> <input type="text" value="A"/> <input type="text" value="T"/> <input type="text" value="T"/> <input type="text" value="A"/> <input type="text" value="C"/> <input type="text" value="H"/> <input type="text" value="E"/> <input type="text" value="D"/> <input type="text" value="R"/> <input type="text" value="E"/> <input type="text" value="P"/> <input type="text" value="O"/> <input type="text" value="R"/> <input type="text" value="T"/> 66					
Inspection Work Days 67 <input type="text" value=""/> <input type="text" value=""/> 69	Facility Self-Monitoring Evaluation Rating 70 <input type="text" value=""/>	BI 71 <input type="text" value=""/>	QA 72 <input type="text" value=""/>	Reserved 73 <input type="text" value=""/> 74 <input type="text" value=""/> 75 <input type="text" value=""/> <input type="text" value=""/> <input type="text" value=""/> <input type="text" value=""/> 80	

Section B: Facility Data

Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number) South Park Commercial Development CKW Properties, LLP U.S. Highway 85 & ND Highway 23 Watford City, ND 58854	Entry Time/Date 8/6/13 1:30 PM	Permit Effective Date unpermitted
	Exit Time/Date 8/6/13 2:16 PM	Permit Expiration Date unpermitted
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Numbers none on-site Brett Edmann / CEO, New Leaf Hospitality / 763-248-0952 Kirk Wold / Owner, CKW Properties / 701-770-5521 Bill Moonen / Engineer, Advanced Engineering & Environmental Services / 701-774-3080	Other Facility Data (e.g., SIC, NAICS, and other descriptive information) Latitude: 47.795053 Longitude: -103.280067	
Name, Address of Responsible Official/Title/Phone and Fax Number Kirk Wold / Owner, CKW Properties / 701-770-5521 600 S. Main St. Watford City, ND 58854	SIC: 1542 General Permit Number: NDR10-0000	
Contacted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input checked="" type="checkbox"/> Permit	<input checked="" type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> MS4
<input checked="" type="checkbox"/> Records/Reports	<input type="checkbox"/> Compliance Schedule	<input type="checkbox"/> Pollution Prevention	
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water	
<input type="checkbox"/> Effluent/Receiving Waters	<input checked="" type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> Combined Sewer Overflow	
<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Sanitary Sewer Overflow	

Section D: Summary of Findings/Comments

(Attach additional sheets of narrative and checklists, including Single Event Violation codes, as necessary)

SEV Codes	SEV Description
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Phone and Fax Numbers	Date
Stephanie Gieck	EPA 1595 Wynkoop St Denver, CO 80202 303-312-6362	10/30/13
Dallas Grossman (Electronic Review)	NDDH/701-328-5242	
Emilio Llamozas	EPA 1595 Wynkoop St Denver, CO 80202 303-312-6407	10/30/13

INSTRUCTIONS

Section A: National Data System Coding (i.e., PCS)

Column 1: Transaction Code: Use N, C, or D for New, Change, or Delete. All inspections will be new unless there is an error in the data entered.

Columns 3-11: NPDES Permit No. Enter the facility's NPDES permit number - third character in permit number indicates permit type for U=unpermitted, G=general permit, etc. (Use the Remarks columns to record the State permit number, if necessary.)

Columns 12-17: Inspection Date. Insert the date entry was made into the facility. Use the year/month/day format (e.g., 04/10/01 = October 01, 2004).

Column 18: Inspection Type*. Use one of the codes listed below to describe the type of inspection:

A	Performance Audit	U	IU Inspection with Pretreatment Audit	I	Pretreatment Compliance (Oversight)
B	Compliance Biomonitoring	X	Toxics Inspection	Q	Follow-up (enforcement)
C	Compliance Evaluation (non-sampling)	Z	Sludge - Biosolids	J	Storm Water-Construction-Sampling
D	Diagnostic	#	Combined Sewer Overflow-Sampling	K	Storm Water-Construction-Non-Sampling
F	Pretreatment (Follow-up)	\$	Combined Sewer Overflow-Non-Sampling	L	Storm Water-Non-Construction-Sampling
G	Pretreatment (Audit)	+	Sanitary Sewer Overflow-Sampling	M	Storm Water-Non-Construction-Non-Sampling
I	Industrial User (IU) Inspection	&	Sanitary Sewer Overflow-Non-Sampling	N	Storm Water-MS4-Sampling
J	Complaints	\	CAFO-Sampling	O	Storm Water-MS4-Non-Sampling
M	Multimedia	=	CAFO-Non-Sampling	P	Storm Water-MS4-Audit
N	Spill	2	IU Sampling Inspection		
O	Compliance Evaluation (Oversight)	3	IU Non-Sampling Inspection		
P	Pretreatment Compliance Inspection	4	IU Toxics Inspection		
R	Reconnaissance	5	IU Sampling Inspection with Pretreatment		
S	Compliance Sampling	6	IU Non-Sampling Inspection with Pretreatment		
		7	IU Toxics with Pretreatment		

Column 19: Inspector Code. Use one of the codes listed below to describe the lead agency in the inspection.

A	State (Contractor)	O	Other Inspectors, Federal/EPA (Specify in Remarks columns)
B	EPA (Contractor)	P	Other Inspectors, State (Specify in Remarks columns)
E	Corps of Engineers	R	EPA Regional Inspector
J	Joint EPA/State Inspectors—EPA Lead	S	State Inspector
L	Local Health Department (State)	T	Joint State/EPA Inspectors—State lead
N	NEIC Inspectors		

Column 20: Facility Type. Use one of the codes below to describe the facility.

- 1 — Municipal: Publicly Owned Treatment Works (POTWs) with 1987 Standard Industrial Code (SIC) 4952
- 2 — Industrial: Other than municipal, agricultural, and Federal facilities
- 3 — Agricultural: Facilities classified with 1987 SIC 0111 to 0971.
- 4 — Federal: Facilities identified as Federal by the EPA Regional Office
- 5 — Oil & Gas: Facilities classified with 1987 SIC 1311 to 1399.

Columns 21-66: Remarks. These columns are reserved for remarks at the discretion of the Region.

Columns 67-69: Inspection Work Days. Estimate the total work effort (to the nearest 0.1 work day), up to 99.9 days, that were used to complete the inspection and submit a QA reviewed report of findings. This estimate includes the accumulative effort of all participating inspectors; any effort for laboratory analyses, testing and remote sensing, and the billed payroll time for travel and pre and post inspection preparation. This estimate does not require detailed documentation.

Column 70: Facility Evaluation Rating. Use information gathered during the inspection (regardless of inspection type) to evaluate the quality of the facility self-monitoring program. Grade the program using a scale of 1 to 5 with a score of 5 being used for very reliable self-monitoring programs, 3 being satisfactory, and 1 being used for very unreliable programs.

Column 71: Biomonitoring Information. Enter D for static testing. Enter F for flow through testing. Enter N for no biomonitoring.

Column 72: Quality Assurance Data Inspection. Enter Q if the inspection was conducted as followup on quality assurance sample results. Enter N otherwise.

Columns 73-80: These columns are reserved for regionally defined information.

Section B: Facility Data

This section is self-explanatory except for "Other Facility Data," which may include new information not in the permit or PCS (e.g., new outfalls, names of receiving waters, new ownership, other updates to the record, SIC/NAICS Codes, Latitude/Longitude).

Section C: Areas Evaluated During Inspection

North Dakota NPDES Storm Water Inspection - Construction

NATIONAL DATABASE INFORMATION	
Inspection Date: 8/6/13	Inspection Type: Construction Stormwater
Entry Time: 1:30 pm	Exit Time: 2:16 pm
NPDES ID Number: unpermitted	
Inspector: Stephanie Gieck	EPA/State/Contractor
Inspector: Dallas Grossman	EPA/State/Contractor

Facility Location Information:	
Site/Facility Location: South Park Commercial Development CKW Properties, LLP U.S. Highway 85 & ND Highway 23 Watford City, ND 58854	Mail Report to: Vogel Law Firm, Ltd., Registered Agent CKW Properties, LLP P.O. Box 1389 Fargo, ND 58107

Contact Information:		
	Name(s)/Title	Telephone
Facility Contacts: <i>(indicate primary lead and present during inspection)</i>	Kirk Wold / Owner / CKW Properties (not present)	701-770-5521
	Brett Erdmann / CEO / New Leaf Hospitality (not present)	763-248-0952
	Bill Moonen / Engineer / Advanced Engineering & Environmental Services (not present)	701-774-3080
Person/Company meeting definition of "Operator"	CKW Properties, LLP is the owner. A complete list of operators are unknown.	
Authorized Official(s) (Per NOI or SWMP?)	Unknown	

Permit Information:			
Is the permit on site and available? No		Date NOI Submitted: no NOI submitted	
Effective Date: unpermitted		Expiration Date: unpermitted	
Construction Start Date: summer 2012 (based on 5/16/12 McKenzie County Farmer article)	% complete: ~50%	Estimated Completion Date: unknown	
Disturbed Area: ~47 acres (based on site's website, inspection)	Total Project Area: 50 acres (based on site's website)	Latitude: 47.795053	Longitude: -103.280067
Receiving Water(s): Cherry Creek, a tributary of the Little Missouri River			
If applicable, is erosivity waiver certification & approval on file? N/A			
Regulatory Inspector's source of information: Inspection, facility contacts, 5/16/12 McKenzie County Farmer article, site's website (http://www.watfordcitysouthpark.com)			

Site Information:								
Nature of Project	Commercial/Industrial			Roadway	Private	Federal	State/Municipal	Other
	Residential	Rough Grading	Infrastructure					
Construction Stage	Clearing/Grubbing	Rough Grading	Infrastructure	Building Const.	Final Grading	Final Stabilization		

North Dakota NPDES Storm Water Inspection - Construction

Inspection and Site Description

Upon arriving at the South Park Commercial Development (the site) at 9:40 am, the EPA inspector Stephanie Gieck and NDDH inspector Dallas Grossman attempted to make contact with site representatives by contacting subcontractors in the Rice Building Systems, Inc. trailer, which was locked and by calling Brett Erdmann with New Leaf Hospitality and leaving a message at the phone number posted on a sign at the site (701-570-9957). When no site representatives could be contacted, the inspectors left the site and returned again 1:30 pm. Ms. Gieck spoke with a concrete sub-contractor who indicated that Kirk Wold would be the best site contact, but he did not have a phone number. The inspectors proceeded to view the site from the public access areas and took photos.

On 9/3/13, Ms. Gieck made contact via telephone with Brett Erdmann with New Leaf Hospitality. Mr. Erdmann provided a phone number for Mr. Wold with CKW Properties. Mr. Wold was contacted by Ms. Gieck via telephone on 9/4/13. Ms. Gieck explained the basics of the stormwater permit and who is required to obtain permit coverage. Mr. Wold indicated that Advanced Engineering and Environmental Services obtained all the permits for the site. Ms. Gieck provided Mr. Wold an email with a link to construction stormwater information for North Dakota. Ms. Gieck contacted Bill Moonen with Advanced Engineering and Environmental Services via telephone on 9/4/13. Mr. Moonen stated that he was not sure if a stormwater permit was obtained or if a stormwater pollution prevention plan (SWPP plan) had been prepared. Mr. Moonen stated that two engineers who had worked on the site had left the company and that he would get back to Ms. Gieck with information in a couple days. No further information was received.

According to the site's website (<http://www.watfordcitysouthpark.com>), the site is a 50 acre commercial development. The only area that did not appear to have been disturbed was an approximate 3-acre wetland-like area on the northwest corner (photo 730). Concrete roads, storm drains, and some commercial buildings had been constructed. At the time of the inspection, a Cenex gas station, a Cash Wise grocery store, and an Alco home good store had been constructed and were open for business on the northern portion of the site (photos 704 and 705). A Little Missouri hotel was constructed and operational on the southwest corner of the site (photos 721 and 727), and another hotel was under construction on the south side of the site (photos 721 and 726). Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728).

There were two drainage ditches on the eastern portion of the site south of the Cenex that appeared to discharge stormwater from the storm drains on the site. One drainage ditch was directly south of the Cenex and flowed east to Cherry Creek (photos 709 and 711), and a second drainage ditch was just south of the first drainage ditch and flowed southeast to Cherry Creek (photos 710 and 711). Both drainage ditches had visible sediment deposited in them. The drainage ditches discharged over rip rap to Cherry Creek, and sediment was visible in the rip rap. The site was disturbed up to the wetland-like vegetation along Cherry Creek in this area with no BMPs (photo 711). Sediment was visible in Cherry Creek below the drainage ditch outlet south of the Cenex (photo 712). The site had a silt fence along the eastern edge of the Cenex property; the silt fence was damaged and had sediment more than halfway up the side of the silt fence in areas. There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714).

Concrete wash out was visible on the ground in multiple areas south of the Cenex (photos 715 and 717) and inside one storm drain (photo 725). A spilled substance was observed west of the hotel under construction (photo 726). An equipment storage area was located south of the Cenex (photo 716), on the north central portion of the site by the Rice Building Systems, Inc. trailer (photos 703 and 705), and near the hotels on the south side of the site (photo 721).

North Dakota NPDES Storm Water Inspection - Construction

SWPP Plan General		Notes:
Is there a SWPP plan? (SWPP plan Date) Part I.D.2.c and I.C.1	N	A copy of the SWPP plan was requested from Mr. Moonen on 9/4/13. Mr. Moonen was not sure if one was developed, and none has been received.
Is a copy of the SWPP plan onsite? Part III.B and II.C.7.a	N	
Is a copy of the signed NOI and coverage letter from the NDDH onsite? Part III.B	N	Mr. Moonen stated that he was not sure if a stormwater permit was obtained.
SWPP plan completed prior to NOI? Part I.D.2.c	N	
Copy of the general permit onsite? Part III.B	N	
SWPP plan identifies all permittees and their areas of control? Part II.C	N/A	The site was unpermitted.
Did all permittees sign/certify the SWPP plan? Part II.C.7.a	N	

SWPP Plan Site Description		Notes:
SWPP plan identifies potential sources of pollution? Part II.C	N	There is no SWPP plan for the site.
Is there a site description including the function of the project? Part II.C.1.a	N	
Total area of site and total area to be disturbed? Part II.C.1.b	N	
Timetable for soil disturbing activities? Part II.C.1.c	N	
A description of soil within the disturbed areas? Part II.C.1.d	N	
Name of Receiving water(s) or MS4 listed? Part II.C.1.e	N	
Is there a site map? Part II.C.1.f	N	
Does the site map include drainage patterns? Part II.C.1.f.1	N	
Does the site map include construction site boundaries and areas of soil disturbance? Part II.C.1.f.2	N	
Does the site map include location of	N	

North Dakota NPDES Storm Water Inspection - Construction

SWPP Plan Site Description		Notes:
structural and non-structural BMPs identified in the SWPP plan? Part II.C.1.f.3		
Does the site map include location of stabilization practices? Part II.C.1.f.4	N	
Does the site map include location of surface water (including wetlands)? Part II.C.1.f.5	N	
Does the site map include location of storm water discharges to a surface water? Part II.C.1.f.6	N	
Does the site map include location of concrete/asphalt batch plants, equipment staging areas, borrow sites or excavated fill disposal areas (on-site or off-site)? Part II.C.1.f.7	N	

SWPP Plan Controls to Reduce Pollutants		Notes:
Identify person to oversee implementation of the SWPP plan? Part II.C.2.a	N	
Is there a description of good housekeeping practices to maintain a clean and orderly facility? Part II.C.2.b	N	A spilled substance was observed west of the hotel under construction (photo 726), and trash was observed on a storm drain near the hotels (photo 728).
Is there a description of preventative maintenance practices? Part II.C.2.c	N	
Have spill prevention and response procedures been established where potential spills can occur? Part II.C.2.d	N	
Annual employee training to include spill response, good housekeeping and sediment control practices? Part II.C.2.e	N	
Has an erosion and sediment control plan been developed to identify the appropriate control measures in accordance with Appendix 1? Part II.C.3	N	

North Dakota NPDES Storm Water Inspection - Construction

SWPP Plan Controls to Reduce Pollutants			Notes:
Does the erosion and sediment control plan identify when each control measure will be implemented during the project for each major phase of the site activity? Part II.C.3		N	
Are temporary (or permanent) sediment basins used when disturbing 10 or more acres of land which drain to a common location? Appendix I.A.1		N	No sediment basin was observed on-site.
Is the sediment basin that drains over 10 acres, is it adequately designed? (3,600 cu.ft/acre x total drainage acres) Appendix I.A.1		N	No sediment basin was observed on-site.
Basin outlets properly designed (e.g. perforated riser pipe wrapped with filter fabric and covered with crushed gravel, pumps or other means) Appendix I.A.1		N	No sediment basin was observed on-site.
If a sediment basin is not used, is the combination of measures used equivalent? Appendix I.A.2		N/A	
Has temporary erosion protection or permanent cover been provided for areas with a continuous positive slope w/in 200 linear feet of surface water occurred within 21 days of completing or ceasing earth moving activities? Note: temp. stockpiles without significant silt, clay or organic components (aggregates, concrete, sand) are exempt. Appendix I.A.3		N	Construction activity had ceased on the majority of the site south of the Cash Wise and Alco, except for the area where the hotel was under construction. There was no temporary erosion protection or permanent cover for the exposed soil in these areas.
Temporary soil stock piles have effective sediment controls and are not placed in surface waters, including curb and gutter systems? Appendix I.A.4	Y		A soil stockpile observed on the site has a vegetative buffer between the stockpile and a wetland-like area (photo 729).
Is the normal wetted perimeter of any temporary or permanent drainage ditch that drains water from the site or diverts water around the site, is stabilized within 200 lineal feet from the property edge, or from the point of discharge to any surface water? Stabilization is to occur within 24 hours of connecting to a surface water. Appendix I.A.5		N	The normal wetted perimeter of the two drainage ditches south of the Cenex was not stabilized within 200 feet from the point of discharge to Cherry Creek (photos 709 and 710).
Were pipe outlets provided with temporary or permanent energy dissipation within 24 hours of connection to a surface water? Appendix I.A.6	Y		The drainage ditch outlets had rip rap above Cherry Creek (photo 711).

North Dakota NPDES Storm Water Inspection - Construction

SWPP Plan Controls to Reduce Pollutants			Notes:
Is there any unbroken slope length of greater than 75 feet for slopes with a grade of 3:1 or steeper? Appendix 1.A.7		N	
If sediment escapes from the site, off-site accumulations of sediment must be removed to minimize off-site impacts? Part II.C.3.d		N	Off-site sediment has not been removed. Sediment was observed in Cherry Creek (photos 712 and 713).
Does SWPP plan identify pollutant sources from areas other than construction? Appendix 1.C		N	
Does the SWPP plan describe controls for pollutants from non-construction activities? Appendix 1.C		N	
Does the SWPP plan identify post construction control? And are post construction controls being maintained? Part II.C.4		N	
Is SWPP plan amended when there is a change in design, construction, operation, or maintenance? Part II.C.7.c		N	

SWPP Plan Implementation (Site review)							
Structural and Stabilization Practices							
List and describe structural and stabilization practices							
	SWPP Plan / Site Map			Used On-Site			Comments
Silt Fence			N/A	Y			The site had silt fence along the eastern edge of the Cenex property; the silt fence was damaged and had sediment more than halfway up the side of the silt fence in areas. There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714).
Sedimentation pond			N/A		N		

North Dakota NPDES Storm Water Inspection - Construction

Vehicle track-out pad			N/A		N	Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728). There were no tracking controls on the site.
Storm inlet protection			N/A		N	Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728).
Good housekeeping & waste disposal practices			N/A		N	Concrete wash out was visible on the ground in multiple areas south of the Cenex (photos 715 and 717) and inside one storm drain (photo 725). A spilled substance was observed west of the hotel under construction (photo 726).
Equipment/ maintenance area			N/A	Y		An equipment storage area was located south of the Cenex (photo 716), on the north central portion of the site by the Rice Building Systems, Inc. trailer (photos 703 and 705), and near the hotels on the south side of the site (photo 721).
Concrete washout area			N/A		N	Concrete wash out was visible on the ground in multiple areas south of the Cenex (photos 715 and 717) and inside one storm drain (photo 725).
Port-o-lets			N/A	Y		Port-o-lets were observed on-site.

North Dakota NPDES Storm Water Inspection - Construction

Existing vegetation			N/A	Y		Existing vegetation appeared to have been preserved on approximately three acres on the northwest portion of the site.
Seeding			N/A	Y		There was no evidence of stabilization on the majority of the site, although sod had been planted around the Cash Wise parking area.

<u>Inspections</u>			<u>Notes:</u>	
Does the SWPP plan identify the inspection schedule? Permit requires every 14 days and within 24 hours of a rain event greater 0.5" Part III.A.1		N		
How is precipitation measured (i.e. rain gauge at site or nearest National Weather Service rain gauge within 10 miles)? Part III.A.1		N	Precipitation is not measured.	
Are inspections and maintenance activities recording in writing and retained as required in Part III.B? Part III.A.2		N		
Do the inspection/maintenance reports include: 1. date/time of inspection; 2. names of person conducting inspection; 3. findings of the inspection; 4. recommendations of corrective actions; 5. corrective actions (dates, times and party completing action); 6. date and amount of all rainfall >0.5 inches; 7. documentation that the SWPP plan has been amended Part III.A.2		N	There are no inspection records.	
Are erosion and sediment controls inspected to ensure that they are operating correctly and in serviceable condition? Part II.C.6 and Appendix 1.B.1		N		
Are control devices similar to silt fence or fiber rolls repaired, replaced or supplemented within 24 hours of discovery when they become nonfunctional or the sediment reaches 1/3 of the height of the device? Appendix 1.B.1		Un-known	The site had silt fence along the eastern edge of the Cenex property; the silt fence was damaged and had sediment more than halfway up the side of the silt fence in areas. There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714).	

North Dakota NPDES Storm Water Inspection - Construction

<u>Inspections</u>		Notes:
Are temporary and permanent sedimentation basins drained and the sediment removed within 72 hours of discovery when the depth of the sediment collected in the basin reaches ½ the storage volume? Appendix 1.B.1		N
Are discharge outlets from areas used for storage of materials, permanent stormwater controls and vehicle maintenance areas inspected? Part II.C.6		N
Are surface waters, including drainage ditches and conveyance systems inspected for evidence of sediment deposition? Appendix 1.B.2		N
Are construction site egress locations inspected for evidence of sediment trackout? Appendix 1.B.3		N
Are accumulations of vehicle trackout removed from all off-site paved surfaces within 24 hours of discovery? Appendix 1.B.3		N
		Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728).

SWPP Plan Implementation (Site Review)	
<u>Stabilization Practices</u>	
Are stabilization practices properly installed and adequately maintained? Part II.C.3.b and Appendix 1.A.3	No. Construction activity had ceased on the majority of the site south of the Cash Wise and Alco, except for the area where the hotel was under construction. There was no temporary erosion protection or permanent cover for the exposed soil in these areas. Sod had been planted around the Cash Wise parking area.
Provide temporary erosion protection or permanent cover for the exposed soil areas where activities have been completed or temporarily ceased. For those areas with a continuous positive slope within 200 lineal feet of a surface water, temporary erosion protection or permanent cover must be applied within 21 days of completing or ceasing earth moving activities. These areas include pond embankments, ditches, berms and soil stockpiles. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.	

North Dakota NPDES Storm Water Inspection - Construction

Structural Practices

Are structural controls properly installed and maintained?

Part II.C.5 and Part II.C.3.c

No. Both drainage ditches had visible sediment deposited in them. The drainage ditches discharged over rip rap to Cherry Creek, and sediment was visible in the rip rap. The site was disturbed up to the wetland-like vegetation along Cherry Creek with no BMPs (photo 711). Sediment was visible in Cherry Creek below the drainage ditch outlet shown in the foreground of photo 711. Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728). The site had silt fence along the eastern edge of the Cenex property; the silt fence was damaged and had sediment more than halfway up the side of the silt fence in areas. There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714).

Miscellaneous

Ownership and operators control is not clear at the site. CKW Properties, LLP appears to be the owner based on information from Kirk Wold. A Rice Building Systems, Inc. construction trailer was observed at the site (photo 703). A sign listing Oppidan as the developer was also observed (photo 731). A phone number for Brett Erdmann was observed at the site and called, who works for New Leaf Hospitality. According to Mr. Wold with CKW Prosperities and Bill Moonen with Advanced Engineering and Environmental Services, the engineering for the site was done by Advanced Engineering and Environmental Services.

A review of the rainfall data recorded in Watford City, ND (Station GHCND: USC00329233) from the NOAA website was conducted. The weather station's rain-gage reported thirteen precipitation events with 0.50 inches or more from 6/1/12 to 8/6/13. Construction is assumed to have started in the summer of 2012. Below is a list of dates and precipitation totals of 0.50 inches or more. This does not account for precipitation events since the inspection.

1. 6/8/12 - 0.71 inches
2. 6/25/12 - 0.75 inches
3. 8/4/12 - 0.59 inches
4. 10/4/12 - 1.01 inches
5. 11/10/12 - 0.62 inches
6. 3/4/13 - 0.52 inches
7. 5/20/13 - 1.10 inches
8. 5/28/13 - 0.63 inches
9. 5/31/13 - 0.90 inches
10. 6/4/13 - 1.05 inches
11. 6/22/13 - 1.55 inches
12. 6/23/13 - 0.65 inches
13. 7/14/13 - 0.51 inches

Summary of Findings and Corrective Actions

Facility: South Park Commercial Development - CKW Properties, LLP
Permit #: unpermitted
Inspection Date: 8/6/13

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
<p>1. CKW Properties, LLP did not obtain permit coverage for the South Park Commercial Development site under the North Dakota Department of Health (NDDH) Stormwater General Permit (Permit Number NDR10-0000) (permit). A review of the rainfall data recorded in Watford City, ND (Station GHCND: USC00329233) from the NOAA website was conducted. The weather station's rain-gage reported thirteen precipitation events with 0.50 inches or more from 6/1/12 to 8/6/13. Construction is assumed to have started in the summer of 2012. In addition, sediment was visible in Cherry Creek below the drainage ditch outlet south of the Cenex (photo 712). There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714). Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728). Based on the above information, there is evidence of discharge without a permit at the site. The site did not have a stormwater pollution prevention plan (SWPPP).</p>	<p>Section 301(a) of the Clean Water Act (CWA) (33 U.S.C. § 1311(a)) among other things, prohibits the discharge of any pollutant by any person into waters of the United States except in compliance with a permit issued pursuant to § 402 of the CWA (33 U.S.C. § 1342).</p> <p>Section 402 of the CWA (33 U.S.C. § 1342) establishes the National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.</p> <p>Section 402(p) of the CWA (33 U.S.C. § 1342(p)) requires an NPDES permit for storm water discharges associated with industrial activities. Industrial activity is defined at 40 C.F.R. § 122.26 and includes construction activity.</p> <p>The North Dakota Department of Health (NDDH) Authorization to Discharge Under the North Dakota Pollutant Discharge Elimination System for stormwater associated with construction activity (permit) states in Part I.A.2, "This permit applies to stormwater discharges associated with construction activity and small construction activity as defined in Title 40 of the Code of Federal Regulations (CFR), Parts 122.26(b)(14)(x) and (b)(15), respectively. The reference to construction activity in this permit includes both large construction activity and small construction activity as described below.</p> <p>a. Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	<p>area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.</p> <p>b. Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater that one and less than five (5) acres.”</p> <p>Part I.C of the permit states:</p> <p>“1. To obtain authorization under this general permit for stormwater discharges you must submit a complete application and develop a Stormwater Pollution Prevention (SWPP) plan in accordance with Part II.C of this permit. A plan must be in place as a condition of the permit and a copy of the plan must be retained by the permittee. A copy of the plan must be submitted with the application for certain facilities as described in Part I.D.</p> <p>2. Permit coverage will become effective 7 days after you submit a complete application unless otherwise notified by the Department (based on the department receipt date).</p> <p>3. Upon the effective date of permit coverage you as the permit applicant are authorized to discharge stormwater from eligible activities under the terms and conditions of this permit.”</p> <p>Part II.C of the permit states, “All permittees shall implement a Stormwater Pollution Prevention (SWPP) plan for any construction project requiring this permit until final stabilization is achieved. The SWPP plan and revisions are subject to review by the Department.”</p> <p>Part II.C.7 of the permit states, “The permittee shall</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	<p>amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in stormwater.”</p> <p><u>Corrective Actions:</u> Prepare a SWPP plan in accordance with permit requirements and then submit a notice of intent (NOI) for coverage under the permit. Implement the SWPP plan, and update it as necessary. Information on the permit and SWPP plan is available at http://www.ndhealth.gov/wq/storm/construction/constructionhome.htm.</p> <p><u>Additional Information Requested:</u> Provide a copy of the SWPPP and NOI to the EPA and NDDH in response to this report.</p>
<p>2. The following housekeeping and waste management issues were identified:</p> <p>a. A spilled substance was observed west of the hotel under construction (photo 726), and trash was observed on a storm drain near the hotels (photo 728); and</p> <p>b. Concrete wash out was visible on the ground in multiple areas south of the Cenex (photos 715 and 717) and inside one storm drain (photo 725).</p>	<p>Part II.C.2.b of the permit states, “Good housekeeping practices to maintain a clean and orderly site. Litter, debris, chemicals and parts must be handled properly to minimize the exposure to stormwater.”</p> <p>Part II.C.2.f of the permit states, “Concrete wash water, grindings and slurry, shall not be discharged to waters of the state, storm sewer systems or allowed to drain onto adjacent properties.”</p> <p>Part II.C.3 of the permit states, “The erosion and sediment control plan must conform to the guidelines provided in Appendix 1.”</p> <p>Appendix 1, Part C of the permit states: “1. Properly handle construction debris and waste materials. Provide appropriate container(s) on site (or centrally located at several sites) for storing debris and other wastes until disposal. Litter and debris shall be picked-up regularly to reduce the chance for materials to be carried off</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	<p>the site by wind or water. Collected material shall be taken to the appropriate facility for disposal or recycling.</p> <p>2. Concrete wash water shall not be discharged to any waters of the state, storm sewer systems or allowed to drain onto adjacent properties. Wash water disposal must be limited to a defined area of the site or to an area designated for cement washout. The area(s) must be sufficient to contain the wash water and residual cement.”</p> <p><u>Corrective Actions:</u> Address these issues in the SWPP plan in accordance with permit requirements, and implement the SWPP plan.</p>
<p>3. The normal wetted perimeter of the two drainage ditches south of the Cenex was not stabilized within 200 feet from the point of discharge to Cherry Creek (photos 709 and 710).</p>	<p>Part II.C.3 of the permit states, “The erosion and sediment control plan must conform to the guidelines provided in Appendix 1.”</p> <p>Appendix 1, Part A.5 of the permit states, “The normal wetted perimeter of any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized at least 200 lineal feet from the property edge, or from the point of discharge to any surface water. Stabilization should be completed within 24 hours of connecting to a surface water.”</p> <p><u>Corrective Actions:</u> Stabilize the normal wetted perimeter of the drainage ditches and address this in the SWPP plan in accordance with permit requirements.</p>
<p>4. Sediment had escaped the site, and off-site sediment had not been removed. The BMPs were not adequate to prevent sediment deposition off-site. Sediment was observed in Cherry Creek (photos 712 and 713). The site had silt fence along the eastern edge of the Cenex property; the silt fence was damaged</p>	<p>Part II.C.3.c of the permit states, “All control measures must be properly selected, installed, and maintained in accordance with the manufacturer’s specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations. The permittee may deviate from the manufacturer’s specifications and erosion and</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
<p>and had sediment more than halfway up the side of the silt fence in areas. There was sediment that appeared to have flowed under the silt fence into Cherry Creek (photos 713 and 714). Storm drains through the site were unprotected and had sediment inside of them, and sediment track-out was on the roads throughout the site (photos 706, 707, 708, 718, 719, 722, 723, 724, 725, 727, and 728).</p>	<p>sediment control guidelines in Appendix 1 if they provide justification for the deviation and document the rationale for the deviation in the SWPP plan.”</p> <p>Part II.C.3.d of the permit states, “If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.”</p> <p>Part II.B.5 of the permit states, “Maintenance. All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate, as appropriate, the maintenance or clean out interval for sediment controls. If site inspections, required in Part III of this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.”</p> <p>Part II.C.3 of the permit states, “The erosion and sediment control plan must conform to the guidelines provided in Appendix 1.”</p> <p>Appendix 1, Part I.B.4 of the permit states, “If sediment escapes the construction site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts (e.g., fugitive sediment in streets could be washed into storm sewers by the next rain and/or pose a safety hazard to users of public streets).”</p> <p>Corrective Actions: Remove sediment in a manner and at a frequency sufficient to minimize off-site impacts, and address this in the SWPP plan in accordance with permit requirements. Ensure the SWPP plan prevents further sediment deposition off-site, and ensure all control measures are properly selected, installed, and maintained in effective operating</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	condition. Implement the SWPP plan.
<p>5. No sediment basin or equivalent sediment control was observed on-site. More than 10 acres drain through the drainage ditches observed on-site.</p>	<p>Part II.C.3 of the permit states, "The erosion and sediment control plan must conform to the guidelines provided in Appendix 1."</p> <p>Appendix 1, Part I.A of the permit states, "Temporary (or permanent) sediment basins, or equivalent control, must be provided where ten (10) or more acres of disturbed area drain to a common location prior to the runoff leaving the site or entering surface waters. The permittee is encouraged, but not required, to install temporary sediment basins where appropriate in areas with steep slopes or highly erodible soils even if less than ten (10) acres drains to one area. The basins must provide at least the following:</p> <p>The basins shall be sized to provide 3,600 cubic feet of storage below the outlet pipe per acre drained to the basin. Alternative designs may be used which provide storage below the outlet for a calculated volume of runoff from a 2 year, 24 hour storm and provides not less than 1800 cubic feet of storage below the outlet pipe from each acre drained to the basin.</p> <p>Basin outlets must be designed to avoid short-circuiting and the discharge of floating debris. The basin must be designed with the ability to allow complete basin drawdown (e.g., perforated riser pipe wrapped with filter fabric and covered with crushed gravel, pumps or other means) for maintenance activities. The drawdown should be designed to release the storage volume in a 24 hour or longer period. The basin must have a stabilized emergency overflow to prevent failure of pond integrity. Energy dissipation must be provided for the basin outlet.</p> <p>2. Where the temporary sediment basin is not practical due to site limitations or nature of disturbance (such as developing a roadway, pipeline,</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	<p>or diversion) a combination of measures must be used to provide equivalent sediment control for all down slope boundaries of the construction area and for side slope boundaries as deemed appropriate by individual site conditions. Equivalent sediment controls include such things as smaller sediment basins and/or sediment traps, silt fences, and vegetative buffer strips. In determining whether installing a sediment basin is attainable, the permittee must consider public safety and may consider factors such as site soils, slope and available area on site.”</p> <p><u>Corrective Actions:</u> Provide a sediment basin or equivalent sediment control for all areas where 10 or more acres of disturbed area drain to a common location prior to the runoff leaving the site or entering surface waters. Address this in the SWPP plan in accordance with permit requirements. Implement the SWPP plan.</p>
<p>6. Construction activity had ceased on the majority of the site south of the Cash Wise and Alco, except for the area where the hotel was under construction. There was no temporary erosion protection or permanent cover for the exposed soil in these areas. Sod had been planted around the Cash Wise parking area.</p>	<p>Part II.C.3.b of the permit states, “Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided as outlined in Appendix 1 for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.”</p> <p>Part II.C.3 of the permit states, “The erosion and sediment control plan must conform to the guidelines provided in Appendix 1.”</p> <p>Appendix 1, Part A.3 of the permit states, “Provide temporary erosion protection or permanent cover for the exposed soil areas where activities have been completed or temporarily ceased. For those areas with a continuous positive slope within 200 lineal feet of a surface water, temporary erosion protection or permanent cover must be applied within 21 days of completing or ceasing earth moving activities. These areas include pond embankments, ditches,</p>

Findings	Permit Requirements, Corrective Actions, Recommended Actions and Additional Information Requested
	<p>berms and soil stockpiles. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) are exempt from this requirement.”</p> <p><u>Corrective Actions:</u> Stabilized areas where construction activity has ceased, and address this in the SWPP plan in accordance with permit requirements. Implement the SWPP plan.</p>
<p>7. The construction start date is unknown.</p>	<p><u>Additional Information Requested</u> Provide the EPA and NDDH with the date construction started at the site.</p>
<p>8. Ownership and operators control is not clear at the site. CKW Properties, LLP appears to be the owner based on information from Kirk Wold. A Rice Building Systems, Inc. construction trailer was observed at the site (photo 703). A sign listing Oppidan as the developer was also observed (photo 731). A phone number for Brett Erdmann was observed at the site and called, who works for New Leaf Hospitality. According to Mr. Wold with CKW Prosperities and Bill Moonen with Advanced Engineering and Environmental Services, the engineering for the site was done by Advanced Engineering and Environmental Services.</p>	<p><u>Additional Information Requested</u> Provide the EPA and NDDH with:</p> <ul style="list-style-type: none"> a. A list of owners for the site and which portions they own or have owned since construction began at the site. If any parcels or portions have been sold since construction began, provide the date of transfer, who it was sold to, and a map identifying which parcels or portions have been sold; b. A list of construction operators at the site (excluding subcontractors) along with contact information; and c. A list of each construction operator’s area of responsibility at the site.

Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 703
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Rice Building Systems, Inc. trailer on the north part of the site. Construction storage area.

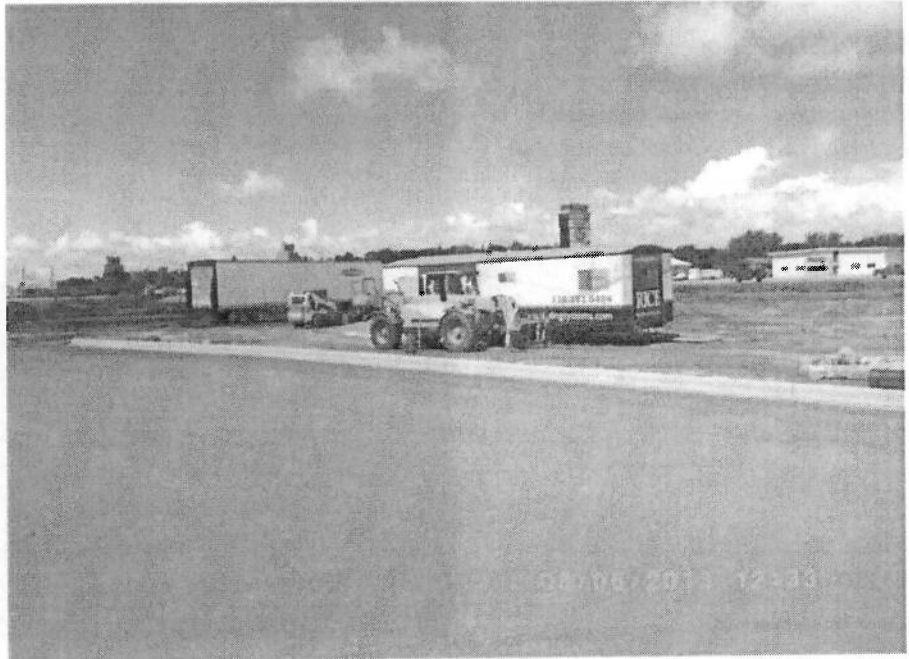


Photo Number 704
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Cash Wise Foods and Alco constructed at the site in the central portion.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 705
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Cenex constructed on the northeast corner of the site. Construction storage area.



Photo Number 706
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Storm drain along a road east of the Cash Wise. Note the sediment in the road and no BMPs.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 707
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View inside the storm drain in photo 706. Note the sediment inside.

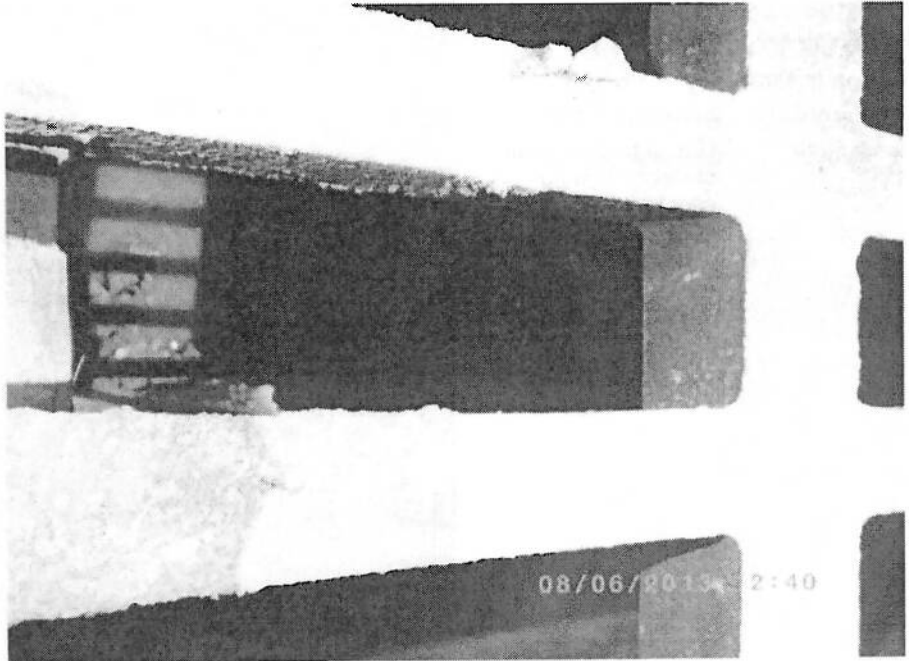
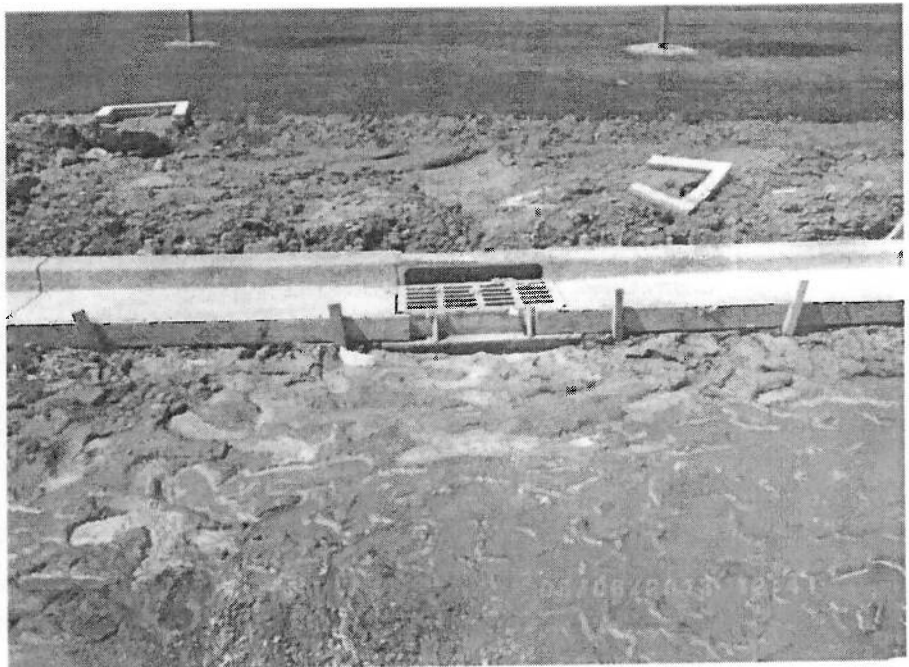


Photo Number 708
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description New storm drain along a road east of the Cash Wise across from the storm drain in photo 706.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 709
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Drainage ditch south of Cenex flowing east toward Cherry Creek.



Photo Number 710
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Second drainage ditch south of the drainage ditch in photo 709 flowing southeast toward Cherry Creek.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 711
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Drainage ditch outlet area for the drainage ditch shown in photo 709 (foreground) and in photo 710 (background). Cherry Creek is on the left. Note the sediment in the rip rap and no BMPs on the disturbed soil in the area.



Photo Number 712
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Sediment was visible in Cherry Creek below the drainage ditch outlet shown in photo 711.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 713
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View along the east side of the Cenex property. Cherry Creek is on the right. Note the sediment in the creek that flowed under the silt fence and the sediment is more than 1/3 the height of the silt fence.



Photo Number 714
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View to the south along Cherry Creek showing broken silt fence.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 715
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Concrete washout
on the ground south
of the Cenex.



Photo Number 716
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Equipment storage
south of the Cenex.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 717
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Concrete washout on the ground south of the Cenex.



Photo Number 718
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Two storm drains along the road south of the Cash Wise. Note there are no BMPs and there is sediment in the road.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 719
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View inside the storm drain on the right in photo 718. Note the sediment inside.



Photo Number 720
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View south of the Cash Wise.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 721
Inspection Date 8/6/2013
Photographer Stephanie Gleck
Description View southwest of the Cash Wise. Equipment storage by the hotels.



Photo Number 722
Inspection Date 8/6/2013
Photographer Stephanie Gleck
Description Two storm drains along the road south of the Cash Wise. Note there are no BMPs and there is sediment in the road.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 723
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View inside the storm drain on the right in photo 722. Note the sediment inside.

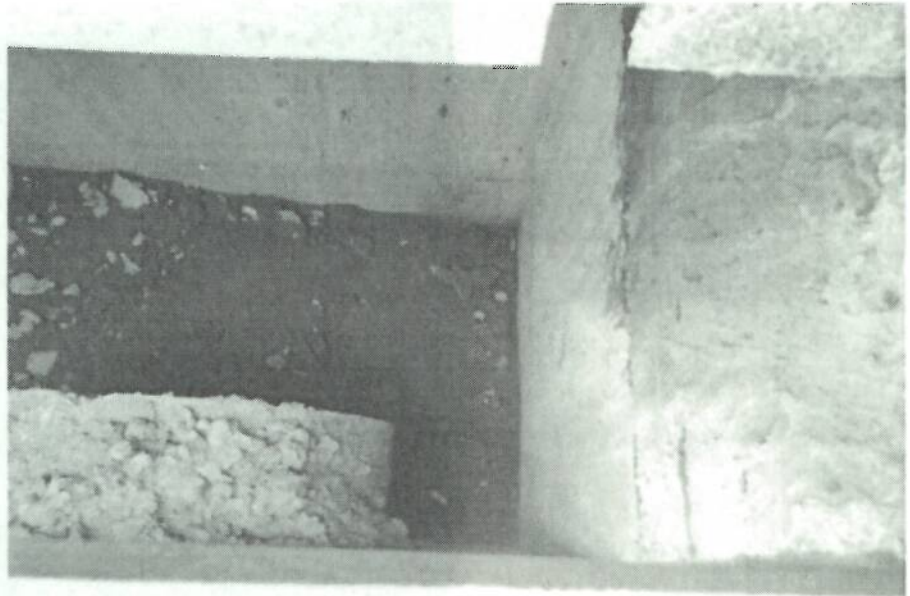
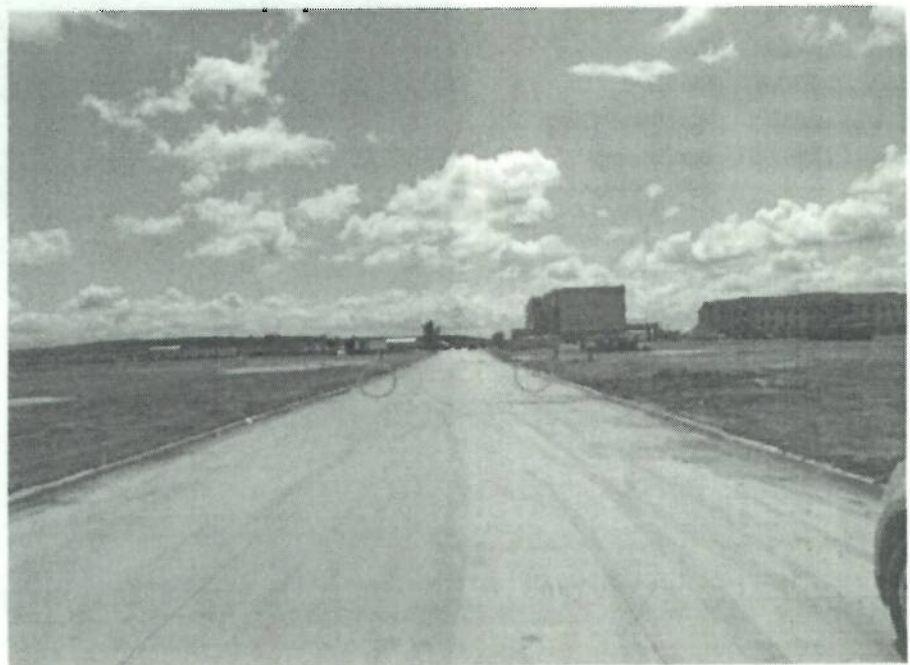


Photo Number 724
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View east of the Cash Wise. There are two storm drains, one on each side of the road, inside of the red circles. Note there are no BMPs and there is sediment in the road.



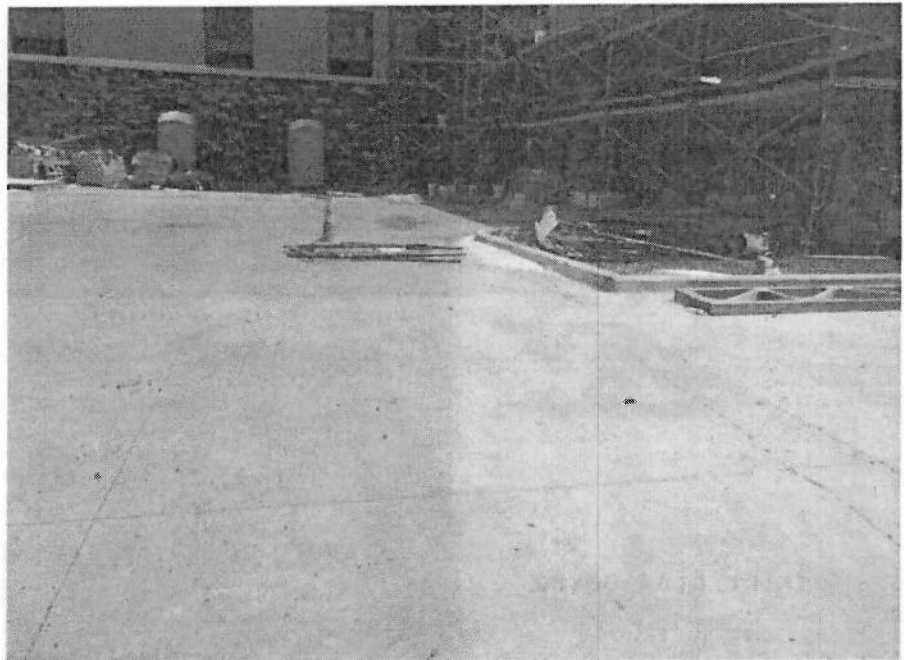
Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 725
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View inside the storm drain on the right in photo 725. Note the sediment and concrete washout inside.



Photo Number 726
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Spill of white substance on the east side of a hotel being built on the south end of the site.



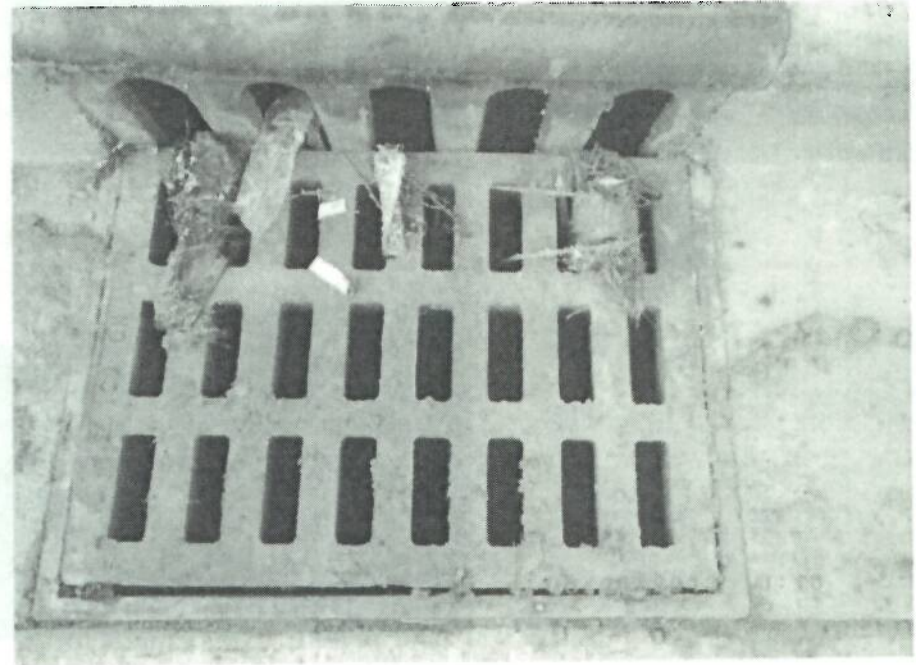
Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 727
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Storm drain west of a hotel being built on the south end of the site. Note the sediment in the road and lack of BMPs around the storm drain.



Photo Number 728
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Close-up of storm drain in photo 727. Note the trash and sediment.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 729
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View of the west side of the site looking north.



Photo Number 730
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description View of the west side of the site looking north. Note standing water and the wetland-like vegetation.



Photographs for South Park Comm. Development - unpermitted

Inspection Type: Stormwater - Construction

Photo Number 731
Inspection Date 8/6/2013
Photographer Stephanie Gieck
Description Watford Plaza sign on the north side of the site.

