



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

09 JAN -6 AM 8:15

EXPEDITED SETTLEMENT AGREEMENT

ENVIRONMENTAL PROTECTION AGENCY - REGION VII  
REGIONAL HEARING CLERK

Docket Number: CWA-07-2008-0094, NPDES No.: KSR-104591

Lowe's Home Center's, Inc. ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

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

Respondent failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

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

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$3,250. 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:

*Karen A. Howman 12/30/08*  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): *Gary E. Wyatt*  
Title (print): *Sr. Vice President*  
Signature: *Gary E. Wyatt* Date: *10-23-08*

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 *Jan 5, 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-0110-1



<b>LEGAL NAME AND MAILING ADDRESS OF OPERATOR</b>		<b>Telephone Number</b>	<b>NPDES Permit Number</b>
1	Lowe's Home Centers, Inc. 1952 McDowell Rd., Ste. 101 Naperville, IL 620563	630-548-7508	KSR104591
		Inspector Name:	David Pratt
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	<input type="checkbox"/> Yes
		Exit Interview Conducted:	<input type="checkbox"/> Yes
		Exit Interview given to:	Les Norton
		Exit Interview time:	14:00 Date: 07/22/2008
<b>LOCATION AND ADDRESS OF SITE</b>			
2	Lowe's of NW Wichita SE Corner of Maize Rd & Central Park Wichita, KS 67203		

<b>FACILITY DESCRIPTION / CONTACT NAMES</b>	
Name of Site Contact (ESO Worksheet recipient):	Michael Miller
Name of Authorized Official (40 CFR 122.22):	Michael Miller
Inspection Date:	07/22/2008
Start Construction Date:	05/05/2008
Estimated Completion Construction Date:	05/01/2009
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	Cowskin Creek
Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:	25.00   29.00
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	No

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 VII p.6			\$5,000.00 =		
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	KSGP VII p.6		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 VII p.8			\$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 VII p.7			\$500.00 =		
8 SWPPP does not have site description, as follows:	Cowskin Creek was not identified on the site map; locations of fuel tanks, solid waste containers, and sanitary facilities were not identified.							
A Nature of activity in description		CGP 3.3.B.1	KSGP VII p.7			\$100.00 =		
B Intended sequence of major activities		CGP 3.3.B.2	KSGP VII p.7			\$100.00 =		
C Total disturbed acreage		CGP 3.3.B.3	KSGP VII p.7			\$100.00 =		
D General location map		CGP 3.3.B.4	KSGP VII p.7			\$100.00 =		
E Site map		CGP 3.3.C	KSGP VII p.7			\$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	KSGP VII p.7	No	4	X	\$50.00 =	\$200
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 VII p.7			\$750.00 =		
B Describe sequence for implementation		CGP 3.4.A	KSGP VII p.7			\$250.00 =		
C Detail operator(s) responsible for implementation		CGP 3.4.A	N/A					
10 SWPPP does not describe interim stabilization practices		CGP 3.4.B	KSGP VII p.7 & p.8			\$250.00 =		
11 SWPPP does not describe permanent stabilization practices		CGP 3.4.B	KSGP VII p.7 & p.8			\$250.00 =		
12 SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	KSGP VII p.7			\$250.00 =		



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 VII p.9				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	KSGP VII p.9				\$50.00	=	
35	Discharge locations are not observed and inspected		CGP 3.10.E	KSGP VII p.9				\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	KSGP VII p.9				\$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)	Inspection reports do not note BMPs requiring maintenance if active construction was taking place in area.	CGP 3.10.G	KSGP VII p.9		1	X	\$50.00	=	\$50
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G	KSGP VII p.9			X	\$50.00	=	

**AVAILABILITY OF RECORDS**

40	Sign/notice not posted		CGP 3.12.B	N/A						
	A Does not contain copy of complete NOI		CGP 3.12.B	KSGP V p.5				\$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						

**BEST MANAGEMENT PRACTICES**

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 VII p.8				\$500.00	=	
42	Control measures are not properly:	Concrete washout installed but not designated/used; curb inlet on Maize Street not maintained; 154 ft of SF not maintained; 50 ft of SF in stockpile area not maintained; dention basin/pumping system selected but not installed in timely manner.								
	A Selected, installed and maintained		CGP 3.13.A	KSGP VII p.6 & p.7		5		\$500.00	=	\$2,500
	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 VII p.6 & p.9				\$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 VII p.8				\$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 VII p.8				\$500.00	=	
	*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 VII p.8				\$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 VII p.8				\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	N/A						
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 VII p.7 & p.8				\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	N/A						

**SMALL BUSINESS EVALUATION**

48	Is the Owner/Operator a Small Business?					No				
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A *small business* is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.

Total Expedited Settlement: **\$3,250**

\* Requires Corrective Action

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

\*\*\* Kansas Water Pollution Control General Permit and Authorization to Discharge - Issued by KDHE on March 1, 2003 - [http://kdhe.state.ks.us/stormwater/resources/cgp\\_revision\\_final.pdf](http://kdhe.state.ks.us/stormwater/resources/cgp_revision_final.pdf)

IN THE MATTER OF Lowe's Home Center's, Inc., Respondent  
Docket No. CWA-07-2008-0094

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 Thibos 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:

Gary E. Wyatt, Sr. Vice President  
Lowe's Home Center's, Inc.  
1952 McDowell Rd., Suite 101  
Napersville, Illinois 60563

Dated: 1/16/09

  
Kathy Robinson  
Hearing Clerk, Region 7