

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2019-0220
Stag's Ridge, LLC	)	
AND	)	
KAT Excavation, Inc.	)	
	)	
	)	
Respondents	)	FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE
	)	
Proceedings under Section 309(a)(3) of the	)	
Clean Water Act, 33 U.S.C. § 1319(a)(3)	)	
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**Preliminary Statement**

1. The following Findings of Violation are made and Order for Compliance (“Order”) is issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a)(3). The authority to take action under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), is vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

2. The Respondents in this case are Stag’s Ridge, LLC and KAT Excavation, Inc. (“Respondents”).

**Statutory and Regulatory Framework**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit.

4. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2 (1993).

6. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

7. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

8. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area which are part of a larger common plan of development or sale.

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **FACTUAL BACKGROUND**

11. Each Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent Stag's Ridge, LLC was an owner or operator of a commercial/residential construction site (“Site”), comprised of approximately 22 acres, which is located just northwest of the intersection of K-7 Highway and West Spruce Street in Olathe, Kansas.

13. At all times relevant to this action, Respondent KAT Excavation, Inc. was a contractor of Respondent Stag's Ridge, LLC at the Site, and was an owner or operator of the Site.

14. At the time of the EPA inspection, described below, Respondents, and/or persons acting on their behalf, had cleared and graded approximately 15 acres of the 22-acre construction project at the Site.

15. Stormwater, snow melt, surface drainage, and runoff water leave Respondents' Site and discharge through various drainage pathways to an unnamed tributary to Little Cedar Creek and Little Cedar Creek.

16. Stormwater from the Site contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14), and is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Little Cedar Creek and its tributary identified in Paragraph 15 above are "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. Stormwater runoff from Respondents' industrial activity at the Site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondents' discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. KDHE NPDES General Permit No. KSR100000 ("Permit") dated July 14, 2017 was effective August 1, 2017; the Permit will expire on July 31, 2022. This Permit governs Respondents' stormwater discharges that are associated with industrial activity at the Site.

22. The principal requirement of the Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities, describe and ensure the implementation of best management practices ("BMPs") that will be used to reduce the pollutants in stormwater discharge associated with industrial activity for construction activities at the construction site, and to assure compliance with the terms and conditions of the Permit.

23. On January 24, 2019, Respondent Stag's Ridge, LLC submitted a Notice of Intent ("NOI") with KDHE seeking coverage under the Permit, and on February 22, 2019, KDHE authorized the coverage under permit number KSR114479.

24. On May 14, 2019, EPA performed a Construction Stormwater Compliance Evaluation Inspection ("Inspection") of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents' compliance with the Permit and the CWA.

25. During the Inspection or shortly thereafter, the EPA inspector reviewed and obtained copies of documents related to the Permit, including without limitation, the Site's SWPPP dated October 17, 2018 and Site inspection and self-monitoring records. The EPA inspector also toured the Site and photographed various stormwater-related areas.

26. During the Inspection, the EPA inspector observed and documented significant amounts of sediment in the unnamed tributary to Little Cedar Creek and Little Cedar Creek that could be traced back to the Site.

27. On May 15, 2019, Respondent KAT Excavation, Inc. provided a written response to some of the issues identified during the inspection. On May 24, 2019, the EPA inspector issued a Notice of Potential Violation ("NOPV") citing, *inter alia*, inadequate sediment control along the banks of the unnamed tributary to Little Cedar Creek, construction entrances full of sediment, a portable toilet placed on top of a stormwater inlet, dewatering occurring without a sediment control device, and rock check dams in need of maintenance. On May 24 and May 30, 2019, a representative for Respondent Stag's Ridge, LLC responded to the NOPV.

## **FINDINGS OF VIOLATION**

### **Count 1**

#### **Failure to Ensure that Discharges Do Not Contribute to an Excursion of Kansas Surface Water Quality Standards**

28. Paragraphs 1 through 27 are re-alleged and incorporated herein by reference.

29. Part 3, Paragraph 4 of the Permit, What This Permit or the Rainfall Erosivity Waiver Does Not Cover, states that the Permit does not authorize construction activities that result in the discharge of stormwater runoff which violates the Kansas Surface Water Quality Standards.

30. During the Inspection referenced above, the EPA inspector observed discharges of stormwater from the Site into the unnamed tributary to Little Cedar Creek, resulting in observed increases of turbidity in both the unnamed tributary and Little Cedar Creek, which demonstrates a violation of Kansas Surface Water Quality Standards.

31. Respondents' alleged failure to ensure that discharges from the Site do not contribute to an excursion of water quality standards is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

**Failure to Maintain a Copy of the KDHE-Authorized Notice of Intent and Stormwater Pollution Prevention Plan at the Construction Site**

32. Paragraphs 1 through 31 are re-alleged and incorporated herein by reference.
33. Part 5 of the Permit, Starting Construction Activity, states that a copy of the authorized Notice of Intent and the project-specific SWPPP, including the erosion and sediment control plan for the specific project, shall be readily available at the Site.
34. During the EPA Inspection referenced above, the inspector requested a copy of the NOI and the Site's SWPPP. Copies of the NOI and the SWPPP were not maintained on Site.
35. Respondents' alleged failure to keep copies of the NOI and the SWPPP on Site is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 3

**Failure to Properly Install, Operate, and/or Maintain Best Management Practices (alternatively, Failure to Fully Implement the Provisions of the SWPPP)**

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.
37. Part 7 of the Permit, SWPPP Requirements and Guidelines, states the permittee shall fully implement the provisions of the SWPPP required as a condition of the Permit throughout the term of the construction project.
38. Part 7 of the Permit further states that the permittee shall select, install, utilize, operate and maintain effective BMPs.
39. Part 7.1 of the Permit, General SWPPP Requirements, states the permittee shall ensure the BMPs and/or pollution controls are properly installed and maintained at the locations and relative timeframes specified in the SWPPP.
40. Part 7.2.5 of the Permit, Temporary and Permanent Non-Structural BMPs, requires the permittee to avoid clearing and grubbing within 50 feet of a defined drainage course if feasible. If changes to the defined drainage course are to occur as part of the project plan, they should be completed as soon as possible once the work has been initiated. Area impacted by the course changes is to be re-vegetated or stabilized to minimize the length of time the area is exposed.

41. Part 7.2.3(1) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that control stormwater volume and velocity in order to minimize pollutant discharges.

42. Part 7.2.3(3) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize the amount of soil exposed during construction activity.

43. Part 7.2.3(4) of the Permit, Detailed SWPPP Requirements, requires the permittee minimize the disturbance of steep slopes of forty percent or greater.

44. Part 7.2.3(5) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize sediment discharges from the Site.

45. Part 7.2.3(6) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that provide and maintain natural buffers around waters of the United States.

46. Part 7.2.3(10) of the Permit, Detailed SWPPP Requirements, requires the permittee to control discharges from sediment or soil stockpiles.

47. Part 7.2.3(12) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize off-site tracking of soils by utilizing wheel washing facilities or an appropriately designed construction entrance and exit.

48. During the EPA Inspection referenced above, the inspector observed that:

- a. The construction entrance/exit was full of sediment. The facility had trackout that was present on the roadway and appeared to be there for more than one day;
- b. A portable toilet was placed on top of a stormwater inlet;
- c. The rock ditch checks ("RDCs") observed during the Inspection needed maintenance;
- d. The conveyance ditches for the middle and eastern soil stockpiles did not feature any stormwater BMPs to settle and reduce sediment entering the unnamed tributary to Little Cedar Creek;
- e. The silt fence around the soil stockpiles was not installed as specified in the SWPPP;
- f. The majority of the vegetative buffer around the unnamed tributary had been stripped. No BMPs were installed to protect the slopes and banks abutting the unnamed tributary; and
- g. The silt fence installation along the western boundary of the Site was not complete at the time of the Inspection.

49. The failures to comply with the terms and conditions of the Permit resulted in observed impacts to Little Cedar Creek and its tributary.

50. Respondents' alleged failure to properly install, operate, and/or maintain BMPs at the Site or, in the alternative, failure to fully implement the SWPPP, is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

#### Count 4

#### **Failure to Develop an Adequate SWPPP**

51. Paragraphs 1 through 50 are re-alleged and incorporated herein by reference.

52. Part 7 of the Permit, SWPPP Requirements and Guidelines, states that before initiating construction activities the permittee shall develop an SWPPP that is specific to the construction activities that are employed at the site authorized by the NPDES Permit.

53. Part 7.2.2 of the Permit, Description of BMPs, states that the SWPPP shall include a description of BMPs, including what site conditions must be met before removal of the BMP if it is not permanent.

54. During the EPA Inspection referenced above, in addition to the deficiencies listed in Paragraph 48, the inspector noted that the SWPPP did not provide information specific to the Site and was not complete. The inspector noted:

- a. The Site map did not specifically list the streams, surface water bodies, or any other waters that will be receiving stormwater runoff from the Site;
- b. The SWPPP did not have a map available which showed site locations of BMPs installed at the Site during the inspection;
- c. The SWPPP included multiple prompts to add information that had not been filled in;
- d. The SWPPP failed to identify what Site conditions must be met before BMPs may be removed;
- e. The SWPPP did not identify the steep slopes present at the Site and did not specify BMPs to protect them; and
- f. The SWPPP did not include BMPs to address sanitary sewer manhole de-watering.

55. The failures to comply with the terms and conditions of the Permit resulted in observed impacts to Little Cedar Creek and its tributary.

56. Respondents' alleged failure to develop an adequate SWPPP is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 5

**Failure to Update and Amend the SWPPP**

57. Paragraphs 1 through 56 are re-alleged and incorporated herein by reference.

58. Part 7.3.2 of the Permit, Amendment of the SWPPP, requires that the permittee shall modify or amend the SWPPP, at a minimum, whenever there is a change in design, operation, or maintenance of BMPs, pollution controls, or pollution prevention measures, and whenever the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation, such as excessive site erosion, excessive sediment leaving the site, or excessive sediment deposits in drainage channels, streams, or lakes.

59. Part 7.2.7 of the Permit, Sedimentation Basins, states that the SWPPP shall require a sedimentation basin where feasible for each drainage area with 10 or more acres disturbed at one time. When construction of a sediment basin is impractical, then the SWPPP shall evaluate and specify other similarly effective BMPs.

60. During the EPA Inspection referenced above, in addition to the deficiencies set forth in Paragraphs 48 and 54, the inspector observed:

- a. The one-phase construction sequence described in the SWPPP did not adequately describe Site conditions. The Site was both stockpiling and performing sanitary sewer connections prior to completing stormwater connections and installing the box culvert in the ravine to provide access to the Site and building the planned commercial buildings; and
- b. The SWPPP indicated that a sediment basin was not necessary because no more than 10 acres would be disturbed, but the EPA inspector approximated that 15 acres were disturbed at the time of the inspection.

61. The failure of the SWPPP to accurately describe Site conditions and the significance of sediment migration and impacts on the receiving streams requires an amendment of the SWPPP and the installation of more robust BMPs to meet the requirements of the Permit.

62. Respondents' alleged failure to update and amend the SWPPP is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 6

**Failure to Take Appropriate Corrective Actions Following Deficiencies Identified During Self-Inspections**

63. Paragraphs 1 through 62 are re-alleged and incorporated herein by reference.



64. Part 7.2.10 of the Permit, Site Inspections by Permittee, requires that the permittee shall ensure the entire site is inspected on a regular schedule (not to exceed every 14 days), and by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater. The Permit further requires that a report of each regularly scheduled inspection and required rain event inspection shall be documented and any deficiencies in the operation and maintenance, effectiveness, adequacy or coverage extent of all installed BMPs shall be noted in the inspection report and corrected within seven days unless infeasible.

65. The EPA inspector reviewed several months of inspection reports generated by Respondents and noted that the inspections called for two corrective actions which were not corrected within seven days of Respondents' inspections:

- a. The portable toilet was placed on top of a stormwater inlet, and Respondents' inspection reports identified that issue on both April 30, 2019 and May 14, 2019. The portable toilet was not moved until May 14, 2019, following the EPA Inspection; and
- b. Respondents' inspection reports dated April 30, 2019, May 3, 2019, May 8, 2019, and May 14, 2019 identified the need to maintain the construction entrance. The construction entrance was not maintained until May 14, 2019, following the EPA Inspection.

66. Respondents' alleged failure to take appropriate corrective actions following deficiencies identified during self-inspections is a violation of the terms and conditions of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. §1342(p).

### **ORDER FOR COMPLIANCE**

Based on the findings set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondents are hereby ORDERED as follows:

67. Respondents shall comply with the SWPPP, the terms and conditions of the Permit, and the CWA.

68. Within seven (7) days of the effective date of this Order, Respondents shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the Permit.

69. Within fourteen (14) days of the effective date of this Order, Respondents shall provide EPA and KDHE a written description of the actions they have taken to correct the deficiencies and eliminate and prevent recurrence of the violations cited above.

70. Respondents shall submit to EPA site inspection reports as required by their Permit on a monthly basis until written termination of this Order, as described in Paragraph 82. After a period of one year, Respondents may request termination of this requirement.

All required documents, including certifications, shall be submitted by electronic mail to:

garcia.delia@epa.gov  
Delia Garcia, Ph.D.  
U.S. Environmental Protection Agency – Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

Electronic submissions will be deemed submitted on the date they are transmitted electronically. Any report, notification, certification, or other communication that cannot be submitted electronically shall be submitted in hard-copy as provided in this Paragraph.

All documents required to be submitted to KDHE pursuant to this Order shall be submitted by mail to:

Tom Stiles, Acting Director  
Kansas Department of Health and Environment  
Bureau of Water  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

### **GENERAL PROVISIONS**

#### **Opportunity to Confer**

70. Within five days of receipt of this Order, Respondents may request a conference regarding the Order or may request to submit information to EPA. If Respondents request a conference or wish to submit information, the conference or submission of information shall take place within 10 days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.

71. Requests for a conference shall be made in writing to the EPA contact identified in Paragraph 69.

#### **Effect of Compliance with the Terms of This Order**

72. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondents of their responsibility to obtain any required local, state, and/or federal permits.

73. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

#### **Amendments**

74. EPA may subsequently amend this Order in accordance with the authority of the CWA. For example, EPA may amend this Order to address any non-compliance with the CWA, including, but not limited to, any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by this original Order.

#### **Access and Requests for Information**

75. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property operated by Respondents and/or to request additional information from Respondents, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

#### **Severability**

76. If any provision or authority of this Order, or the application of this Order to Respondents, is held by federal judicial authority to be invalid, the application to Respondents of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

#### **Parties Bound**

77. This Order shall apply to and be binding upon Respondents, their agents, successors and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Order.

#### **Confidential Business Information**

78. Pursuant to 40 C.F.R. §§ 2.201-2.311, Respondents may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information."

Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the CWA appear in 40 C.F.R. § 2.302.

### **Failure to Comply**

79. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondents to (1) civil penalties of up to \$54,833 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

### **Judicial Review**

80. Respondents have the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

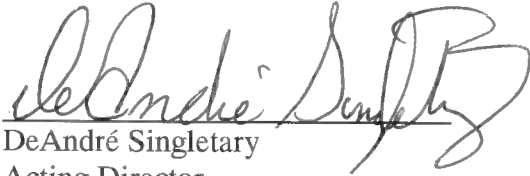
### **Effective Date**

81. The terms of this Order shall be effective and enforceable against Respondents upon their receipt. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

### **Termination**

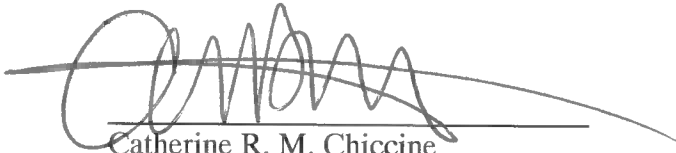
82. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

**For the Complainant, United States Environmental Protection Agency, Region 7:**



DeAndré Singletary  
Acting Director  
Enforcement and Compliance Assurance Division

6-20-19  
DATE



Catherine R. M. Chiccine  
Assistant Regional Counsel  
Office of Regional Counsel

6/20/19  
DATE

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Stag's Ridge, LLC  
Registered Agent: Midwest Realty Solutions, LLC  
7021 Johnson Drive  
Mission, Kansas 66203;

KAT Excavation, Inc.  
Registered Agent: Registered Agents, Inc.  
4601 E. Douglas Street, Suite 150  
Wichita, Kansas 67218; and

Tom Stiles, Acting Director  
Kansas Department of Health and Environment  
Bureau of Water  
1000 SW Jackson Street, Suite 420  
Topeka, Kansas 66612-1367

Date

6/20/2019

[Signature]