



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2013 NOV -6 AM 10: 57

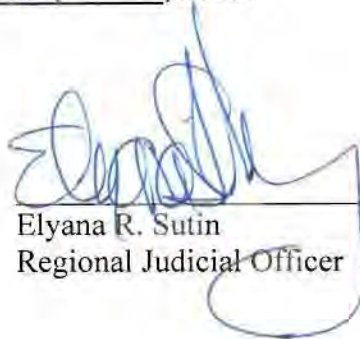
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2013-0030

IN THE MATTER OF:)	
)	
ROERS DEVELOPMENT, INC.)	FINAL ORDER
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 6th DAY OF November, 2013.



Elyana R. Sutin
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
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Ref: 8ENF-L

September 20, 2013

Ms. Tina Artemis
Regional Hearing Clerk
U. S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Roers Development, Inc.
Docket No. **CWA-08-2013-0030**

Dear Ms. Artemis:

Enclosed for filing please find an Expedited Settlement Agreement (Agreement) between the U.S. Environmental Protection Agency (EPA) and Roers Development, Inc. (Roers). It has been approved by the EPA and Roers. The EPA intends to issue a public notice of the Agreement. After the conclusion of the public comment period, the EPA will notify you whether any comments have been received and whether the EPA requests that the Regional Judicial Officer enter an order approving the Agreement.

I understand that Roers is not represented by counsel in this matter. Its contact person is Rick Larson, Registered Agent, Roers Development, Inc., 200 45th Street South, Fargo, North Dakota, 58103-0907.

Please contact me at 303-312-6858 or livingston.peggy@epa.gov if you have any questions.

Sincerely,

Margaret J. (Peggy) Livingston
Margaret J. (Peggy) Livingston
Senior Enforcement Attorney

cc:

Dallas Grossman, North Dakota Department of Health
Rick Larson, Roers Development, Inc.
Matt Petron, City of Minot



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

1595 Wynkoop Street
Denver, Colorado 80202

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2013-0030, NPDES Permit No. NDR104642

2013 SEP 20 AM 10:34

FILED
EPA REGION VIII
HEARING CLERK

This Expedited Settlement Agreement (Agreement) is entered into between the U.S. Environmental Protection Agency (EPA), and Roers Development, Inc. (Respondent), a North Dakota corporation and a "person" within the meaning of section 502(5) of the Clean Water Act (Act), 33 U.S.C. § 1362(5).

St. Louis, MO 69197-9000
Docket No. CWA-08-2013-0030
Roers Development, Inc.

The EPA finds that Respondent failed to comply with the National Pollutant Discharge Elimination System (NPDES) storm water permit cited above, which was issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342, and that Respondent is responsible for the deficiencies specified in the attached Expedited Settlement Offer Deficiencies Form (Form), which is incorporated by reference. The EPA also finds, and Respondent admits, that the EPA is authorized to assess administrative penalties for NPDES permit violations pursuant to section 309 of the Act, 33 U.S.C. § 1319, and 40 C.F.R. part 22, and that the Regional Judicial Officer for EPA Region 8 has jurisdiction to issue a final order ratifying this Agreement under section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13(b). Respondent neither admits nor denies the deficiencies specified in the Form.

This Agreement settles the EPA's civil penalty claims against Respondent for the violation(s) specified in the Form. The 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, any permit issued under the Act, or of any other federal statute or regulation. The EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. The EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and shall become final thirty (30) days from the date an order approving it is issued by the Regional Judicial Officer, unless a petition to set aside the order approving this Agreement is filed by a commenter pursuant to section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), or a hearing is requested under section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

The parties enter into this Agreement in order to settle civil penalty liability for the violations described in the Form for a penalty of \$9,250.00. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the statements in the Form; (2) participate in 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).

APPROVED BY THE EPA:

[Signature]

Date: 08/09/13

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

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. No later than the date it signs this Agreement, Respondent shall submit a written report detailing the specific actions taken to correct all violations cited in the Form. Respondent also certifies that, no later than 10 days after receiving notice from the EPA that a final order has been signed ratifying this Agreement, Respondent shall submit a bank, cashiers or certified check, with the case name and docket number noted, for the amount specified above payable to the Treasurer, United States of America, to:

[Signature]

Date: 8/9/13

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

APPROVED BY RESPONDENT:

[Signature]

Name of individual signing (printed)

Title of individual signing (printed)

[Signature]
Signature

Date: 9/12/13

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

**PUBLIC NOTICE OF PROPOSED EXPEDITED SETTLEMENT AGREEMENT AND
OPPORTUNITY TO COMMENT ON CWA COMPLAINT**

Action: The EPA is providing notice of a proposed expedited settlement agreement and the opportunity to comment on the proposed agreement for alleged violations of the Clean Water Act (CWA) at the Southgate Addition Development, being constructed at 1919 35th Avenue Southwest, Minot, North Dakota, 58701 (Ward County).

Summary: The EPA is authorized by section 309(g) of the CWA, 33 U.S.C. § 1319(g), to issue an order assessing a civil administrative penalty for violations of certain provisions of the CWA, after providing (1) an opportunity for the person to be assessed the penalty (the Respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is forty days after issuance of this notice.

On August 12, 2013, the EPA commenced a civil administrative action by offering an expedited settlement offer against the Respondent identified below, alleging violations of the CWA and a permit. Pursuant to section 309(g)(4) of the CWA, the EPA hereby notifies the public of the EPA's proposed penalty assessment against:

Roers Development, Inc.
200 45th Street South
Fargo, ND 58103

EPA Docket Number: **CWA-08-2013-0030**

Proposed penalty: \$9,250.00

Alleged violations: (1) Failing to maintain required documents on site, (2) failing to maintain a complete storm water pollution prevention plan, (3) failing to conduct required self-inspections, and (4) failing to install and maintain best management practices to minimize discharges of sediment and other pollutants into waters of the United States.

PUBLIC COMMENTS

Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice. Written comments submitted by the public will be available for public review. Any person submitting written comments has a right to participate in a hearing, if one is held. The Complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://www.epa.gov/region8/compliance/publicnotice> under Docket **CWA-08-2013-0030**

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129.
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the complaint or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by the EPA to finalize a settlement in this matter until 40 days after this public notice.

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 the EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law,

IT IS SO ORDERED:

_____ Date: _____
Hon. Elyana R. Sutin
Regional Judicial Officer

**Expedited Settlement Offer Worksheet
Deficiencies Form**
Consult instructions regarding eligibility criteria
and procedures prior to use

version 10.3.4



LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number
1	Larry Nygard, President Roers Development, Inc. 200 45th Street South Fargo, ND 58103	701-356-5050	NDR104642
		Inspector Name:	Emilio Llamozas
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
LOCATION AND ADDRESS OF SITE		Exit Interview given to:	Philip Keller
2	1919 35th Avenue SW Minot, ND 58701	Exit Interview time:	11:24 Date: 07/18/2013

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient): Andy Kelly	
Name of Authorized Official (40 CFR 122.22): Larry Nygard	
Inspection Date: 07/18/2013	
Start Construction Date: 06/01/2012	
Estimated Completion Construction Date: 06/01/2014	
If Unpermitted, Number of Months Unpermitted: N/A	
Name of Receiving Water Body (Indicate whether 303(d) listed): City of Minot MS4, then to the Souris River	
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 25.40 24.40	
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)? No	

PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficiencies	Dollar Amount	Total
3	Site unpermitted for one month (# months unpermitted equals number of violations). Discharge without a permit.	CWA 301			\$500.00 =	
SWPPP REVIEW						
4	SWPPP not prepared (if no SWPPP, leave elements 5 - 30 blank)	ND CGP I.C.1			\$5,000.00 =	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)	ND CGP I.C.1			\$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, etc...	ND CGP II.C			\$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	ND CGP II.C			\$500.00 =	
8	SWPPP does not have site description, as follows:					
A	Nature of activity in description	ND CGP II.C.1.a			\$100.00 =	
B	Intended sequence of major activities	ND CGP II.C.1.c			\$100.00 =	
C	Total disturbed acreage	ND CGP II.C.1.b			\$100.00 =	
D	General location map	EPA CGP 3.3.B.4			\$100.00 =	
E	Site map	ND CGP II.C.1.f			\$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)	ND CGP II.C.1.f.1-6			\$50.00 =	
G	Location/description industrial activities, like concrete or asphalt batch plants	ND CGP II.C.1.f.7			\$500.00 =	
9	SWPPP does not:					
A	Describe all pollution control measures (e.g. BMPs)	ND CGP II.C.2			\$750.00 =	
B	Describe sequence for implementation	ND CGP III.C.3			\$250.00 =	
C	Detail operator(s) responsible for implementation	ND CGP II.C.2.a			\$250.00 =	

10	SWPPP does not describe interim stabilization practices	SWPPP does not describe interim stabilization practices.	ND CGP II.C.3.b	Yes	1	x	\$250.00	=	\$250
11	SWPPP does not describe permanent stabilization practices	SWPPP does not describe permanent stabilization practices.	ND CGP II.C.3.b	Yes	1	x	\$250.00	=	\$250
12	SWPPP does not describe a schedule to implement stabilization practices	SWPPP does not describe a schedule to implement stabilization practices.	ND CGP II.C.3	Yes	1	x	\$250.00	=	\$250
13	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)		EPA CGP 3.4.C.1-3				\$250.00	=	
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		EPA CGP 3.4.C				\$500.00	=	
15	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed		EPA CGP 3.4.C				\$500.00	=	
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		EPA CGP 3.4.C				\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		ND CGP II.C.3.a				\$500.00	=	
18	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		ND CGP II.C.3.b				\$250.00	=	
19	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		ND CGP II.C				\$500.00	=	
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		ND CGP II.A				\$500.00	=	
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		ND CGP II.C				\$500.00	=	
22	Endangered Species Act documentation is not in SWPPP		EPA CGP 3.7				\$500.00	=	
23	Historic Properties (Reserved)								
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)	The permit was not kept onsite.	ND CGP III.B	Yes	1	X	\$250.00	=	\$250
25	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)		EPA CGP 3.9				\$750.00	=	
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		EPA CGP 3.9				\$250.00	=	
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		ND CGP IV.A.5				\$500.00	=	
28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under under 28 as 1 violation)		ND CGP II.C.7.c				\$50.00	=	
29	Copy of SWPPP not retained on site	There were two copies of the SWPPP plan onsite; however, the first SWPPP plan had the even pages missing and the other SWPPP plan text was corrupted and could not be read.	ND CGP II.C.7.a	Yes	1	X	\$500.00	=	\$500
	A SWPPP not made available upon request		ND CGP II.C.7.b				\$500.00	=	
30	SWPPP not signed/certified		ND CGP II.C.7.a				\$500.00	=	
							Subtotal SWPPP Deficiencies		\$1,500

31	Inspections not performed and documented at least once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).	Required self-inspections not documented and/or missed by include 7 required self-inspections (between June 1, 2012 and July 18, 2013). Due to frozen site conditions between November 15, 2012 and April 28, 2013; the requirement for inspections were removed between those dates.	ND CGP III.A.1	No	7	X	\$250.00	=	\$1,750
	No inspections conducted and documented (if True, then leave elements 32-39 blank)						FALSE	TRUE	
	Number of Inspections expected if performed every 7 days:	58							
	Number of Inspections expected if performed bi-weekly:	29							
	If known, number of days of rainfall of >0.5"	12							
32	Inspections not conducted by qualified personnel		ND CGP II.C.2.a				\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		EPA CGP 3.10.E.				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		EPA CGP 3.10.E.				\$50.00	=	
35	Discharge locations are not observed and inspected		EPA CGP 3.10.E.				\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		EPA CGP 3.10.E.				\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		EPA CGP 3.10.E.				\$50.00	=	
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)		ND CGP III.A.2				\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		EPA CGP 3.10.G				\$50.00	=	
Subtotal Inspections Deficiencies									\$1,750
40	Sign/notice not posted		EPA CGP 3.12.B				\$250.00	=	
	A Does not contain copy of complete NOI		EPA CGP 3.12.B				\$50.00	=	
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		EPA CGP 3.12.B				\$50.00	=	
Subtotal Records Deficiencies									\$0
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		ND CGP II.C.4.b				\$500.00	=	
42	Control measures are not properly:	No BMPs for two site entrances that were generating significant trackout (photos 8327 and 8357 to 8358). Concrete washout not properly maintained (photos 1319 to 1324, 8349 to 8352, and 8342 to 8346). The dandy bags on the three storm drain inlets were covered in sediment and were in need of maintenance (photos 8345 to 8348 and 8353 to 8354).							
	A Selected, installed and maintained		ND CGP II.C.3.c	Yes	6	X	\$500.00	=	\$3,000
	B Maintenance not performed prior to next anticipated storm event (count each failure to select, install, maintain each BMP as one violation)		ND CGP II.C.5				\$250.00	=	

43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	The sedimentation pond has been dewatered and discharged to a drainage on the northwest section of the site (photos 8335 to 8337). The drainage discharges to a coulee. Sediment had been accumulating on the drainage (photo 8337).	ND CGP II.C.3.d	Yes	1	X	\$500.00	=	\$500
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.)	The SWPP plan mentions that staging and storage areas will be designated and that a fuel truck would be used to fuel construction equipment. The SWPP plan also mentions that the fuel truck would be stored offsite. During the inspection it was noted that there were several fuel tanks onsite without secondary containment (photos 8339 and 8341).	ND CGP II.C.2.b	Yes	2	X	\$500.00	=	\$1,000
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	The apartment's construction had been completed on the southern section of the site; however, no stabilization had occurred at the time of the inspection (photo 8324).	ND CGP II.C.3		1	X	\$500.00	=	\$500
	*Exceptions:								
	(a) Snow or frozen ground conditions								
	(b) Activities will be resumed within 14 days								
	(c) Arid or Semi-arid areas (<20 inches per year)								
46	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm plus 1800 cubic feet storage per acre drained, or 3600 cubic ft. storage per acre drained	The site's temporary sedimentation basin and future stormwater pond was not appropriately constructed for the site to meet the basin capacity requirements (photos 8332 and 8333).	ND CGP II.C.3	Yes	1	X	\$1,000.00	=	\$1,000
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries		ND CGP II.C.3				\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		ND CGP II.C.3				\$500.00	=	
47	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)		ND CGP II.C.3				\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		ND CGP II.C.3				\$500.00	=	
Subtotal BMP Deficiencies									\$6,000
SMALL BUSINESS EVALUATION									
48	Is the Owner/Operator a Small Business? A <i>small business</i> is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.	Per Roers Development, Inc.'s Human Resources Officer, Jan Simonson, the company has 25 employees				Yes			
Total Expedited Settlement:									\$9,250
* Requires Corrective Action									
** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm									

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in the matter of **ROERS DEVELOPMENT, INC.**; **DOCKET NO.: CWA-08-2013-0030** was filed with the Regional Hearing Clerk on September 20, 2013. **THE FINAL ORDER** was filed on November 6 2013.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Peggy Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were emailed and placed in the United States mail to:

Rick Larson, Registered Agent
Roers Development, Inc.
200 45th Street South
Fargo, ND 58103-0907
development@roers.com

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 6, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk

