



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2008 AUG 21 AM 8:44

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2008-0017

IN THE MATTER OF:

KORTE CONSTRUCTION COMPANY

RESPONDENT

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)

FINAL ORDER

Pursuant to 40 C.F.R. §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 Respondents are 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 21st **DAY OF** August, **2008.**

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8

1595 Wynkoop St.

Denver, CO 80202

EXPEDITED SETTLEMENT AGREEMENT

2008 JUL -2 PM 3:33

IN THE MATTER OF: KORTE CONSTRUCTION COMPANY

Docket Number: CWA-08-2008-0017 _____, NPDES No. COR10CC6F



Korte Construction Company ("Respondent") is a Foreign Corporation registered in the State of Colorado to do business and therefore, 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 \$14,950. 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 Regional Judicial Officer), Respondent shall submit a bank, cashier's 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 69197-9000
In the Matter of: Korte Construction Company
Docket No:

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 when more than forty (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.

EPA REGION VIII
CLERK

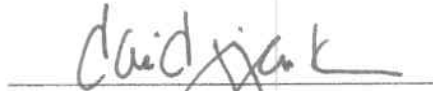
IN THE MATTER OF: KORTE CONSTRUCTION COMPANY

APPROVED BY EPA:



Date: 7/2/08

Darcy O'Connor
Chief, NPDES Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Date: 7/2/08

David J. Janik
Supervisor General Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

APPROVED BY RESPONDENT:

Korte Construction Company

Name: THOMAS F. LYERLA

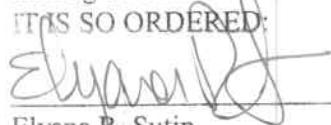
Title: SR VICE PRESIDENT

Signature: 

Date: 7/21/08

Having determined that this Agreement is authorized by law,

IT IS SO ORDERED:



Date: 8.21.08

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			COR 10CC6F
		Inspector Name:	L Hanley
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
LOCATION AND ADDRESS OF SITE		Exit Interview given to:	Mr. Kyle Korte, Mr. Jason Widner, Mr. Johnny Nguyen, Mr. Bill Canciglia
2		Exit Interview time:	13:14 Date: 05/09/2008

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient): Kyle Korte, Project Engineer	
Name of Authorized Official (40 CFR 122.22): Derek Brauer, Project Manager	
Inspection Date: 05/09/2008	
Start Construction Date: 09/04/2007	
Estimated Completion Construction Date:	
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed): B Ditch to Fountain Creek	
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 7 acres	
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	Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301		X	\$500.00 =	
SWPPP REVIEW							
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A			\$5,000.00 =	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A		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, etc...		CGP 3.1.B			\$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			\$500.00 =	

8	SWPPP does not have site description, as follows:	CGP 3.3.B.1: SWPPP did not describe the function of the project (i.e., resident or office complex) CGP 3.3.B.2: The SWPPP does not provide the timing of activities that disturb soils at the site. CGP 3.3.B.3: The NOI states 7 acres for the Barracks Complex - COF. The site representatives and the Corp indicated the Barracks Complex - COF is the smaller of the two sites. In addition, the staging areas may not be included in the 7 acres estimation. CGP 3.3.B.4: The drainage pattern for the storm drains are noted in the Erosion & Sediment Control Plan. This plan is not reference in the SWPPP. This plan does not depict the water flow along the southwest and south side of the project. CGP 3.3.C.1-8: The SWPPP map did not show 1) the location of the dirt pile in the NW staging area, 2) no BMP specified for the NW staging area, 3) the drainage pattern from the swale at the SE hill is not defined, and 4) the SWPPP/SWPPP map not change to show a different BMP implemented at storm drains.							
	A Nature of activity in description		CGP 3.3.B.1	1		\$100.00	=	\$100	
	B Intended sequence of major activities		CGP 3.3.B.2	1		\$100.00	=	\$100	
	C Total disturbed acreage		CGP 3.3.B.3	1		\$100.00	=	\$100	
	D General location map		CGP 3.3.B.4	1		\$100.00	=	\$100	
	E Site map		CGP 3.3.C			\$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	4	X	\$50.00	=	\$200	
	G Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D			\$500.00	=		
9	SWPPP does not:								
	A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A			\$750.00	=		
	B Describe sequence for implementation		CGP 3.4.A			\$250.00	=		
	C Detail operator(s) responsible for implementation		CGP 3.4.A			\$250.00	=		
10	SWPPP does not describe interim stabilization practices		CGP 3.4.B			\$250.00	=		
11	SWPPP does not describe permanent stabilization practices		CGP 3.4.B			\$250.00	=		
12	SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B			\$250.00	=		
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)		CGP 3.4.C.1-3	1	X	\$250.00	=	\$250	
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	The facility had a NW staging area, uphill from the road-side ditch on Harr Ave. The SWPPP did not identify the control measure for this staging area.	CGP 3.4.D	1		\$500.00	=	\$500	
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	The Erosion & Sediment Control Plan shows a sand filter/oil separator overflow draining to one of the storm drains. There is not provision in the SWPPP on the post construction management/maintenance of this unit.	CGP 3.4.E	1		\$500.00	=	\$500	
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CGP 3.4.F			\$500.00	=		
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G			\$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		CGP 3.4.H			\$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		CGP 3.4.I			\$500.00	=		

20	SWPPP does not identify allowable sources of non storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5				\$500.00 =	
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5				\$500.00 =	
22	Endangered Species Act documentation is not in SWPPP		CGP 3.7		1		\$500.00 =	\$500
23	Historic Properties (Reserved)							
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 3.8			X	\$250.00 =	
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)		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	The Erosion & Sediment Control Plan called for two straw waddles to be placed around the storm drain and tacked down. During the inspection, the EPA inspectors observed straw bales placed on top of the storm drains. The SWPPP was not updated to identify any BMP to be implemented downstream from the west staging area.	CGP 3.9		2		\$250.00 =	\$500
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		CGP 3.10.G				\$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)	Six (6) storm drains were observed during the inspection. The SWPPP was not updated to show a change in the BMPs applied at these storm drains.	CGP 3.11.C		6	X	\$50.00 =	\$300
29	Copy of SWPPP not retained on site		CGP 3.12.A				\$500.00 =	
	A SWPPP not made available upon request		CGP 3.12.C				\$500.00 =	
30	SWPPP not signed/certified		CGP 3.12.D				\$500.00 =	
Subtotal SWPPP Deficiencies								\$3,150

INSPECTIONS

31	Inspections not performed and documented either once every 7 days, or 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).	Review of the inspection reports found 14 inspections were not conducted as required by the permit and based on the "weekly" inspection commitment in the SWPPP. These inspections should have occurred between 9/4/07 and 2/29/07.	CGP 3.10.A, 3.10.B		14	X	\$250.00 =	\$3,500
	No inspections conducted and documented (if True, then leave elements 32-39 blank)						True or False	
	Number of Inspections expected if performed every 7 days:	35						
	Number of Inspections expected if performed bi-weekly:	17						
	If known, number of days of rainfall of >0.5"							
32	Inspections not conducted by qualified personnel	The storm water inspections were conducted by Kyle Korte or Jason Widner. Both individuals have years of construction experience but no information is provided in the SWPPP on how they meet the definition of "Qualified Personnel" outlined in Part 3.10.D of the storm water general permit.	CGP 3.10.D		2		\$50.00 =	\$100

33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	The "Daily Progress Report" which records any storm water inspection activities does not indicated that the dirt pile or the west staging areas were inspected.	CGP 3.10.E.		2		\$50.00	=	\$100
34	All pollution control measures not inspected to ensure proper operation	The VTP was install around Nov 2007. There were no inspection reports indicating the VTP was inspected on a weekly bases as required by the SWPPP.	CGP 3.10.E.		1		\$50.00	=	\$50
35	Discharge locations are not observed and inspected	No inspections were documented of the road-side ditch that received the storm drain outlets. In addition, there appears to be sediment on the riprap from the construction activity adjacent to the road-side ditch.	CGP 3.10.E.		1		\$50.00	=	\$50
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E.				\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		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)	Korte used the "Daily Progress Report" to record erosion control activities. There were 25 inspection reports found in the SWPPP file. Each report consistently missed the same information. Deficiencies in the reports include: - no information on the name, title and qualification of the personnel making the inspection; - incomplete weather information, and - incomplete information on the location of BMPs that are implemented, maintained, failed to operate as designed or proved inadequate for a particular location, corrective action required including any changes to the SWPPP necessary and implementation dates.	CGP 3.10.G		75	X	\$50.00	=	\$3,750
39	Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)	Korte used the "Daily Progress Report" to record erosion control activities. There were 25 inspection reports found in the SWPPP file. None of the reports were certified, none were signed by the inspector.	CGP 3.10.G		25	X	\$50.00	=	\$1,250
Subtotal Inspections Deficiencies									\$8,800
AVAILABILITY OF RECORDS									
40	Sign/notice not posted		CGP 3.12.B				\$250.00	=	
	A Does not contain copy of complete NOI		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		CGP 3.12.B				\$50.00	=	
Subtotal Records Deficiencies									\$0

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			\$500.00	=	
42	Control measures are not properly:	Straw bales were laid on the sides or on top of the storm drain grills, unanchored. One of the storm drains had dirt piled on the grill. Straws and dirt were observed in the storm drains. The silt fence along the road-side ditch was torn, had holes or not properly trenched in. The silt fence along the west side of the project did not extend along the entire west side and therefore may not have been effective to managing sediment runoff from the top of the hill to the road-side drainage or to the east side of the project. There were no BMPs on the northeast side of the project to address potential discharge from the staging area that is upstream from the road-side ditch (that drains to B Ditch). There was no BMP to address the drainage from the southern most tip of the swale on the south west side of the project will drain from the hilltop to the street south of building 501. This uncontrolled flow is not identified in the SWPPP and impacts the Ft. Carson MS4.						
	A Selected, installed and maintained		CGP 3.13.A		4	\$500.00	=	\$2,000
	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			\$250.00	=	
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	The EPA inspectors observed sediment loading on Harr Avenue on 5/7/08 and 5/9/08. There was no indication that the facility addressed the sediment loading observed on 5/7 and 9/08 (e.g., there was no indication the VTP was repaired after a significant early morning rain event on 5/7/08.)	CGP 3.13.B		1	\$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.)	On 5/9/08, the inspectors observed "white staining" at east entrance from Harr Ave. to the site. The "white staining" is from crub (cement) cutting conducted that day. This area is directly over the road-side drainage along Harr Ave.	CGP 3.13.C		1	\$500.00	=	\$500
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			\$500.00	=	
	*Exceptions:							
	(a) Snow or frozen ground conditions							
	(b) Activities will be resumed within 14 days							
	(c) Arid or Semi-arid areas (<20 inches per							
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			\$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			\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C			\$500.00	=	
47	Common Drainage less than 10 acres does not have sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)		CGP 3.13.E.3			\$500.00	=	

A Sediment not removed from sediment trap when design capacity reduced by 50% or more	CGP 3.6.C	X	\$500.00	=	
Subtotal BMP Deficiencies					\$3,000
SMALL BUSINESS EVALUATION					
48	Is the Owner/Operator a Small Business?				
	<p>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.</p>				
Total Expedited Settlement:					\$14,950
<p>* Requires Corrective Action ** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm</p>					

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **KORTE CONSTRUCTION COMPANY; DOCKET NO.: CWA-08-2008-0017** was filed with the Regional Hearing Clerk on August 21, 2008.


Further, the undersigned certifies that a true and correct copy of the document was delivered to David Janik, Supervisor General Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on August 21, 2008, to:

Kyle Korte
7356 Coral Ridge Dr.
Colorado Springs, CO 80925

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

August 21, 2008


Tina Artemis
Regional Hearing Clerk

