



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2008-0002

NPDES Nos. IDR10B395 & IDR10B369

RECEIVED

07/10/08 11:10:51  
EPA REGION 10

U.S. EPA, Region 10

In the Matter of: Trail Creek Estates

Docket No.: CWA-10-2008-0002

P.O. Box 371099M

Pittsburgh, PA 15251

Trail Creek Development, LLC and Johnson Excavation Equipment, Inc. ("Respondents") are "persons," 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 Respondents are responsible for the deficiencies specified in the Form.

Respondents had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, and/or failed to comply with their National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

EPA finds, and Respondents admit, that Respondents are 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." Respondents neither admit nor deny 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 \$14,550. Respondents consent to the assessment of this penalty, and waive 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, Respondents certify, 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. Respondents shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondents certify that they have submitted bank, cashiers, or certified checks, with case name and docket number noted, totaling the amount specified above, payable to the "Treasurer, United States of America," via certified mail, to:

This Agreement settles EPA's civil penalty claims against Respondents for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondents 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 upon filing with the Regional Hearing Clerk.

APPROVED BY EPA:

Kimberly A. Ogle Date: 8/14/07  
Kimberly A. Ogle  
Manager, NPDES Compliance Unit

APPROVED BY RESPONDENT:

Name  
(print): Seth Johnson  
Title  
(print): President of Johnson Excavation  
Signature: [Signature] Date: 10/10/07

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:

Richard G. McAllister Date: 11/29/07  
Richard G. McAllister  
Regional Judicial Officer, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in **In the Matter of: Trail Creek Development, LLC and Johnson Excavation Equipment, Inc., DOCKET NO.: CWA-10-2008-0002** was filed with the Regional Hearing Clerk on November 29, 2007.

On November 29, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on November 29, 2007, to:

Chester Lackey and John Kucera  
Trail Creek Development, LLC  
814 Rocky Point Road  
Pocatello, ID 83204

Seth Johnson, CEO and Registered Agent  
Johnson Excavation Equipment, Inc.  
393 East Corwin Lane  
Inkom, ID 83245

DATED this 29<sup>th</sup> day of November 2007.



\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	11/29/07
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		

Total Postage &

Seth Johnson, CEO & Registered Agent  
Johnson Excavation Equipment, Inc.  
393 East Corwin Lane  
Inkom, ID 83245

Sent To

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	11/29/07
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		

Total Postage & F

Chester Lackey and John Kucera  
Trail Creek Development, LLC  
814 Rocky Point Road  
Pocatello, ID 83204

Sent To

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions