



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2006-0249, NPDES No.: IA-8229-8028

06 DEC -1 AM 11:36

ENVIRONMENTAL PROTECTION AGENCY-REGION VII REGIONAL HEARING CLERK

Dial Highlands Quad Cities, LLC ("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 \$12,350. 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, Region 7
P.O. Box 371099M
Pittsburgh, PA 15251

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:

[Signature] Date: 11/20/06
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): Pat Day
Title (print): President
Signature: [Signature] Date: 9/26/06

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:

[Signature] Date: December 1, 2006
Robert J. Patrick
Regional Judicial Officer

**Expedited Settlement Offer Worksheet**

**Deficiencies Form**

Consult instructions regarding eligibility criteria and procedures prior to use

IA: General Permit No. 2



1	<b>LEGAL NAME AND MAILING ADDRESS OF OPERATOR</b>	<b>Telephone Number</b>	<b>NPDES Permit Number</b>		
	Dial-Highland Quad Cities, L.L.C. 11506 Nicholas Street, Suite 200 Omaha, NE 68154	(402) 493-2800	IA-8229-8028		
2	<b>LOCATION AND ADDRESS OF SITE</b>	Inspector Name:	Joe Joslin		
		Inspector Agency:	US EPA		
		Entrance Interview Conducted:	<input type="checkbox"/>	Yes	<input type="checkbox"/>
		Exit Interview Conducted:	<input type="checkbox"/>	Yes	<input type="checkbox"/>
		Exit Interview given to:			
		Exit Interview time:	15:00	Date: 04/19/2006	

<b>FACILITY DESCRIPTION / CONTACT NAMES</b>	
Name of Site Contact (ESO Worksheet recipient):	Merlin Lawrence
Name of Authorized Official (40 CFR 122.22):	Merlin Lawrence
Inspection Date:	04/19/2006
Start Construction Date:	09/01/2004
Estimated Completion Construction Date:	
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	Hopewell Creek
Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:	28.00   28.00
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	IAC 567-64.6(1)		X	\$500.00 =	
<b>SWPPP REVIEW</b>							
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	IAGP IV			\$5,000.00 =	
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	IAGP IV		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	N/A				
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	IAGP IV(D)(7)			\$500.00 =	
8 SWPPP does not have site description, as follows:							
A Nature of activity in description		CGP 3.3.B.1	IAGP IV(D)(1)(A)			\$100.00 =	
B Intended sequence of major activities		CGP 3.3.B.2	IAGP IV(D)(2)			\$100.00 =	
C Total disturbed acreage		CGP 3.3.B.3	IAGP IV(D)(1)(B)			\$100.00 =	
D General location map		CGP 3.3.B.4	IAGP IV(D)(1)(D)			\$100.00 =	
E Site map		CGP 3.3.C	IAGP IV(D)(1)(D)			\$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	IAGP IV(D)(1)(D)		X	\$50.00 =	
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	IAGP IV(D)(2)			\$750.00 =	
B Describe sequence for implementation		CGP 3.4.A	IAGP IV(D)(2)			\$250.00 =	
C Detail operator(s) responsible for implementation		CGP 3.4.A	IAGP IV(D)(7)			\$250.00 =	
10 SWPPP does not describe interim stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)			\$250.00 =	
11 SWPPP does not describe permanent stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)			\$250.00 =	
12 SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)			\$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	N/A			X			
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CGP 3.4.D	IAGP IV(D)(2)(A)(2)				\$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		CGP 3.4.E	IAGP IV(D)(2)(B)				\$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		CGP 3.4.F	IAGP IV(D)(2)(C)				\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	No description of measures in SWPPP	CGP 3.4.G	IAGP IV(D)(2)(C)(2)	Yes	1		\$500.00	=	\$500
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	IAGP IV(D)(2)(C)(1)				\$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	N/A						
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP	No description of non-storm water discharges in SWPPP	CGP 3.5	IAGP IV(D)(5)	Yes	1		\$500.00	=	\$500
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	No identification of BMPs for non-storm water discharges	CGP 3.5	IAGP IV(D)(5)	Yes	1		\$500.00	=	\$500
22	Endangered Species Act documentation is not in SWPPP		CGP 3.7	N/A						
23	Historic Properties (Reserved)			N/A						
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 3.8	IAGP II(C)(1)(G)(3)			X			
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	IAGP IV(D)(2)(D)				\$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		CGP 3.9	N/A						
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	IAGP V(A)				\$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 28 as 1 violation)	Drawing, however, had not been updated to reflect silt fence added at the curb line, for those lots adjacent to Star View Drive.	CGP 3.11.C	IAGP IV(D)(4)(B)	Yes	1	X	\$50.00	=	\$50
29	Copy of SWPPP not retained on site		CGP 3.12.A	IAGP V(B)				\$500.00	=	
	A SWPPP not made available upon request		CGP 3.12.C	IAGP V(B)				\$500.00	=	
30	SWPPP not signed/certified		CGP 3.12.D	IAGP VI(G)				\$500.00	=	
<b>INSPECTIONS</b>										
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).	Approximately 20 months with missing inspection reports.	CGP 3.10.A, 3.10.B	IAGP IV(D)(4)	Yes	20	X	\$250.00	=	\$5,000
	No inspections conducted and documented (if True, then leave elements 32-39 blank)			IAGP IV(D)(4)		FALSE		True or False		
	Number of inspections expected if performed every 7 days:	84								
	Number of inspections expected if performed bi-weekly:	0		N/A						
	If known, number of days of rainfall of >0.5"	23								



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.

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Total Expedited Settlement:

**\$12,350**

\* Requires Corrective Action

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

\*\*\* Iowa Department of Natural Resources NPDES General Permit No.2 issued by IDNR on October 1, 2002 - <http://www.iowadnr.com/water/stormwater/index.html>

IN THE MATTER OF Dial Highlands Quad Cities, LLC, Respondent  
Docket No. CWA-07-2006-0249

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:

Kristina Kemp  
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:

Pat Day, President  
Dial Highlands Quad Cities, LLC  
11506 Nicholas Street, Suite 200  
Omaha, Nebraska 68154

Dated: 12/1/06

  
Kathy Robinson  
Hearing Clerk, Region 7