



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2008 DEC -4 09:10:04

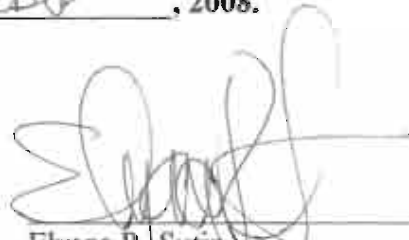
**1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>**

DOCKET NO.: CWA-08-2008-0024

IN THE MATTER OF:)
)
GORDON CONSTRUCTION CO.) **FINAL ORDER**
)
RESPONDENT)

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 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 4th DAY OF December, 2008.



Elyana R. Sutin
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region VIII
1595 Wyncoop Street
Denver, Colorado 80202-1129
EXPEDITED SETTLEMENT AGREEMENT

2008 SEP -9 AM 10:49

IN THE MATTER OF: GORDON CONSTRUCTION COMPANY

Docket Number: CWA- 08-2008-0024, NPDES No. MTR102850

Gordon Construction Company ("Respondent") is a Corporation registered in the State of Montana 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 Montana Pollutant Discharge Elimination System ("MPDES") 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 \$9,300. 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, 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 69197-90000
In the Matter of: Gordon Construction Company
Docket No:

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violations 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 violations 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 the 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.

IN THE MATTER OF: GORDON CONSTRUCTION
COMPANY

APPROVED BY EPA:

 Date: 9/8/08


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

 Date: 9/8/08


David J. Janik
Supervisor General Attorney
Office of Enforcement, Compliance
And Environmental Justice

APPROVED BY RESPONDENT:

Gordon Construction Company

Name:  KEVIN GORDON

Title: PRESIDENT

Signature:  Date: 9/3/08

Having determined that this Agreement is authorized by law,
IT IS SO ORDERED:

_____ Date _____
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	Gordon Construction P.O. Box 17050 Missoula, MT 59808	406-549-0782	MTR102850
		Inspector Name:	Rosemary Rowe and David Rise
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Bert Rautio
		Exit Interview time:	11.20 Date: 07/09/2008
LOCATION AND ADDRESS OF SITE			
2	Intersection of West Broadway and Scott Streets in Missoula Montana		

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient): Kevin Gordon	
Name of Authorized Official (40 CFR 122.22): Kevin Gordon	
Inspection Date: 07/09/2008	
Start Construction Date: 01/01/2008	
Estimated Completion Construction Date: 12/31/2008	
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed): Clark Fork River 303(d) listed	
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 5.95 5.95	
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:	The site map did not show the locations of BMPs.					
A Nature of activity in description		CGP 3.3.B.1			\$100.00	
B Intended sequence of major activities		CGP 3.3.B.2			\$100.00	
C Total disturbed acreage		CGP 3.3.B.3			\$100.00	
D General location map		CGP 3.3.B.4			\$100.00	
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 BF as 1 violation)		CGP 3.3.C.1-8		1	X	\$50.00
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		X	\$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		CGP 3.4.D			\$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			\$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			\$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			\$500.00	=
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		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		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)		CGP 3.11.C		X	\$50.00	=
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							\$50

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).	15	CGP 3.10.A, 3.10.B		15	X	\$250.00	=	\$3,750
	No inspections conducted and documented (if True, then leave elements 32-39 blank)	TRUE					True or False		
	Number of Inspections expected if performed every 7 days:	27							
	Number of Inspections expected if performed bi-weekly:	13							
	If known, number of days of rainfall of >0.5"	2							
32	Inspections not conducted by qualified personnel		CGP 3.10.D				\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E.				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E.				\$50.00	=	
35	Discharge locations are not observed and inspected		CGP 3.10.E.				\$50.00	=	
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)		CGP 3.10.G			X	\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G			X	\$50.00	=	
Subtotal Inspections Deficiencies									\$3,750
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:	4 entrances without trackout controls and 7 unprotected inlets were observed during the inspection.							
	A Selected, installed and maintained		CGP 3.13.A		11		\$500.00	=	\$5,500
	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		CGP 3.13.B				\$500.00	=	
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.)		CGP 3.13.C				\$500.00	=	

Date

ROUTING AND TRANSMITTAL SLIP

TO: (Name, office symbol, room number, building, Agency/Post)

Initials

Date

1. Darcy O'Connor (ENF-W-NP)

DO

9/2/08

2. David Janik (LEP)

3. Tina Artemis (RC)

4.

5.

6.

7.

8.

9.

10.

<input type="checkbox"/>	Action	<input checked="" type="checkbox"/>	File	<input type="checkbox"/>	Note and Return
<input type="checkbox"/>	Approval	<input type="checkbox"/>	For Clearance	<input type="checkbox"/>	Per Conversation
<input type="checkbox"/>	As Requested	<input type="checkbox"/>	For Correction	<input type="checkbox"/>	Prepare Reply
<input type="checkbox"/>	Circulate	<input type="checkbox"/>	For Your Information	<input type="checkbox"/>	See Me
<input type="checkbox"/>	Comment	<input type="checkbox"/>	Investigate	<input checked="" type="checkbox"/>	Signature
<input type="checkbox"/>	Coordination	<input type="checkbox"/>	Justify	<input type="checkbox"/>	

REMARKS

Expedited Settlement Agreement for Gordon Construction

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) Darcy O'Connor	Room No. - Bldg. ENF-W-NP
	Phone No. (303) 312-6392

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **GORDON CONSTRUCTION CO.; DOCKET NO.: CWA-08-2008-0024**. The **SETTLEMENT AGREEMENT** was filed with the Regional Hearing Clerk on September 9, 2008 and the **FINAL ORDER** was filed on December 4, 2008.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to Michael Risner, Director of Legal Enforcement Program, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 4, 2008, to:

Kevin Gordon
Gordon Construction Co.
P. O. Box 17050
Missoula, MT 59808

E-mailed to:

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

December 4, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

