



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 7, 11201 Renner Blvd, Lenexa, KS 66219
EXPEDITED SETTLEMENT AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7
2016 SEP 26 AM 10:35

Docket Number: CWA-07-2016-0063, NPDES No.: IA-5306 - 5141 and IA-24974 - 24715

Country Club Estates, LLC., 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 allegations 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 \$7,225. 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 from when the Agreement is effective (i.e. 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
Fines and Penalties - CFC
P.O. Box 979009
St. Louis, MO 63197-9000

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:

Karen A. Floumoy Date: 9-22-16
Karen A. Floumoy
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): Todd Frazier
Title (print): Manager
Signature: Todd Frazier Date: 7-13-16

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:

Karina Borromeo Date: Sept. 26, 2016
Karina Borromeo
Regional Judicial Officer

Expedited Settlement Offer Worksheet

Deficiencies Form

Consult instructions regarding eligibility criteria and procedures prior to use

IA: General Permit No 2



LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number	
1	Mr Todd Frazier Country Club Estates, LLC 3415 Mulberry Drive Marion, IA 52302	319-929-5700	5306-5141 and 24974-24715	
		Inspector Name	David Pratt	
		Inspector Agency	US EPA	
		Entrance Interview Conducted	Yes	
		Exit Interview Conducted	Yes	
		Exit Interview given to	Todd Frazier	
		Exit Interview time	9:00	Date 12/10/2015
LOCATION AND ADDRESS OF SITE				
2	Tower Terrace Road and Irish Drive Marion, IA 52302			

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient): Todd Frazier	
Name of Authorized Official (40 CFR 122.22): Todd Frazier	
Inspection Date: 12/10/2015	
Start Construction Date: 05/01/2014	
Estimated Completion Construction Date: 10/01/2016	
If Unpermitted, Number of Months Unpermitted: 0	
Name of Receiving Water Body (Indicate whether 303(d) listed): Indian Creek	
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 32.00 54.00	
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 Deficien- cies	Dollar Amount	Total
3 Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301	IAC 567-64.6(1)		X	\$500.00 =	
SWPPP REVIEW							
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	IAGP IV		X	\$5,000.00 =	
5 SWPPP prepared but prepared after construction start (# of months = # of violations)	SWPPP for the 11th addition was not captured in any SWPPPs available during the inspection. The 11th addition had been disturbed approximately 30 days prior to the EPA inspection. The facility submitted an NOPV response including the 11th addition in the SWPPP	CGP 3.1.A	IAGP IV(A)(2)	1	X	\$75.00 =	\$75
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.A	IAGP IV		X	\$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	Rathje Construction had not signed the certification sheet at the time of the inspection. The facility's NOPV response provided documentation illustrating that the contractor signed the certification statement.	CGP 3.3.A	IAGP IV(D)(7)(A)	1	X	\$500.00 =	\$500
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)		X	\$100.00 =	
B Intended sequence of major activities		CGP 3.3.B.2	IAGP IV(D)(2)		X	\$100.00 =	
C Total disturbed acreage		CGP 3.3.B.3	IAGP IV(D)(1)(B)		X	\$100.00 =	
D General location map		CGP 3.3.B.4	IAGP IV(D)(1)(D)		X	\$100.00 =	
E Site map		CGP 3.3.C	IAGP IV(D)(1)(D)		X	\$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)		X	\$750.00 =	
B Describe sequence for implementation		CGP 3.4.A	IAGP IV(D)(2)		X	\$250.00 =	
C Detail operator(s) responsible for implementation		CGP 3.4.A	IAGP IV(D)(7)		X	\$250.00 =	
10 SWPPP does not describe interim stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)		X	\$250.00 =	
11 SWPPP does not describe permanent stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)		X	\$250.00 =	
12 SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)		X	\$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				
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)		X	\$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)		X	\$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)(A)(2)		X	\$500.00 =		
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	IAGP IV(D)(2)(C)(2)		X	\$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	IAGP IV(D)(2)(C)(1)		X	\$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	IAGP IV(D)(6)(C)		X	\$250.00 =		
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5	IAGP IV(D)(5)		X	\$500.00 =		
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5	IAGP IV(D)(5)		X	\$500.00 =		
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 III(C)(1)(G)(3)		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	IAGP IV(D)(2)(D)		X	\$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 IV(D)(4)(C) & V(A)		X	\$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	IAGP(C) & IAGP IV(D)(4)(B)		X	\$50.00 =		
29	Copy of SWPPP not retained on site		CGP 3.12.A	IAGP V(B)		X	\$500.00 =		
	A SWPPP not made available upon request		CGP 3.12.C	IAGP V(B)		X	\$500.00 =		
30	SWPPP not signed/certified		CGP 3.12.D	IAGP VI(G) & VI(H)		X	\$500.00 =		
INSPECTIONS									
31	Inspections not performed and documented once every 7 days (not required if: stabilization with vegetative cover of sufficient density to preclude erosion; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).	The inspection revealed the facility missed 8 inspections.	CGP 3.10.A, 3.10.B	IAGP IV(D)(4)	8	X	\$250.00 =	\$2,000	
	No inspections conducted and documented (if True, then leave elements 32-39 blank)			IAGP IV(D)(4)				True or False	
	Number of Inspections expected if performed every 7 days:			N/A					
32	Inspections not conducted by qualified personnel		CGP 3.10.D	IAGP IV(D)(4)		X	\$50.00 =		
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	The facility only broadly identified issues with stormwater controls on the self inspection reports. In many cases the reports do not provide enough detailed information to describe the location of controls that need to be maintained or updated.	CGP 3.10.E	IAGP IV(D)(4)(A)	1	X	\$50.00 =	\$50	
34	All pollution control measures not inspected to ensure proper operation	Mr. Frazier indicated he does not check all storm water controls during the weekly self-inspections.	CGP 3.10.E	IAGP IV(D)(4)(A)	1	X	\$50.00 =	\$50	
35	Discharge locations are not observed and inspected		CGP 3.10.E	IAGP IV(D)(4)(A)		X	\$50.00 =		
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	N/A					
37	Entrance/exit not inspected for off-site tracking		CGP 3.10.E	IAGP IV(D)(4)(A)		X	\$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	IAGP IV(D)(4)(C)		X	\$50.00 =		

39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)	The facility's inspection reports at the time of the EPA inspection were not signed or certified. The facility started construction in March 2014. The facility was inspected in December 2015. However, although the facility did not certify their inspections, only 8 were missed during the 18 months of activity prior to the EPA inspection	CGP 3.10.G	IAGP IV(D)(4)(C)	1	X	\$50.00	=	\$50
AVAILABILITY OF RECORDS									
40	Sign/notice not posted		CGP 3.12.B	N/A					
	A Does not contain copy of complete NOI		CGP 3.12.B	N/A					
	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	N/A					
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	IAGP IV(D)(2)(B)(2)		X	\$500.00	=	
42	Control measures are not properly:	The facility had numerous instances of stormwater BMPs that were not maintained							
	A Selected, installed and maintained	1. 5,212 feet of silt fence missing along both the west and east side Irish Drive	CGP 3.13.A	IAGP IV(D)(2)	7	X	\$500.00	=	\$3,500
	B Maintenance not performed prior to next anticipated storm event	2. 18 inlets along Irish Drive unprotected	CGP 3.6.B	N/A					
	(count each failure to select, install, maintain each BMP as one violation)	3. 7,284 feet of curb perimeter control BMPs missing from the north and south sides of West Williams Dr., Battle Creek Dr., Saddleback Rd., Bent Creek Dr., to the intersection of Irish Drive 4. 12 unprotected stormwater inlets not protected on West Williams Dr., Battle Creek Dr., Saddleback Rd., and Bent Creek Dr. and Eastview Ave 5. Street sweeping not accomplished prior to inspection throughout the construction site 6. 2 sets of sediment check-dam type controls in need of repair along the drainage that flows north 7. Stormwater intake inundated with sediment along Irish Drive and 2 inlets needing maintenance on West Williams Drive 8. Stormwater intakes east of the sidewalk along Irish Drive BMP not properly installed or maintained 9. 440 feet of silt fence missing along down slope of Eastview Ave 10. At least 6 concrete washout structures were onsite that were in need of maintenance or replacement. CCE asserts the lots containing these structures had been transferred and therefore CCE was no longer responsible. However, the NPDES permit requirements remain applicable to the permittee until the new owner agrees, in writing, to be solely responsible for permit compliance. CCE and the new owners had not certified control of the lots until after the EPA inspection. *NOTE* Items 2, 4, and 8 have been removed from the penalty calculation. The City of Marion MS4 stormwater coordinator asked CCE to remove their inlet protection devices prior to a snow storm. While technically a violation of the permit it was at the behest of a local government agency							
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 3.13.B	N/A					
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.)	Improper housekeeping such as overflowing roll-off dumpsters, empty paint cans, etc., was present onsite. CCE asserts the lots had been transferred and therefore CCE was no longer responsible. However, the NPDES permit requirements remain applicable to the permittee until the new owner agrees, in writing, to be solely responsible for permit compliance. CCE and the new owners had not certified control of the lots until after the EPA inspection.	CGP 3.13.C	IAGP IV(D)(2)(C)(1)	1	X	\$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	11h Addition inactive for more than 21 days without stabilization	CGP 3.13.D	IAGP IV(D)(2)(A)(1)	1	X	\$500.00	=	\$500
	*Exceptions:								
	(a) Snow or frozen ground conditions			N/A					
	(b) Activities will be resumed within 14 days			N/A					
	(c) Arid or Semi-arid areas (<20 inches per year)			N/A					
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	IAGP IV(D)(2)(A)(2)(a)		X	\$1,000.00	=	
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries		CGP 3.13.E.2	IAGP IV(D)(2)(A)(2)(a)		X	\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	N/A					
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	IAGP IV(D)(2)(A)(2)(b)		X	\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	N/A		X			
SMALL BUSINESS EVALUATION									

48	<p>Is the Owner/Operator a Small Business?</p> <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:							\$7,225
<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 *** Iowa Department of Natural Resources NPDES General Permit No.2 issued by IDNR on October 1, 2012 - http://www.iowadnr.gov/InsideDNR/RegulatoryWater/NPDESStormWater/Permits_GuidanceForms.aspx</p>							

IN THE MATTER OF Country Club Estates, LLC, Respondent
Docket No. CWA-07-2016-0063

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

breedlove.dan@epa.gov

Copy by First Class Mail to Respondent:

Todd Frazier, Manager
Country Club Estates, LLC
3415 Mulberry Drive
Marion, Iowa 52302

Dated: 9/20/16



Kathy Robinson
Hearing Clerk, Region 7