



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2013 MAR -5 PM 2: 50

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2013-0008

IN THE MATTER OF:

53 CORPORATION LTD.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 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 5th DAY OF March, 2013.

Elyana R. Sutin
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8
1595 Wynkoop Street
Denver, Colorado 80202

2013 JAN 22 AM 10:50

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2013-0008, NPDES Permit No. COR03J721

FILED
EPA REGION VIII
HEARING CLERK

This Expedited Settlement Agreement (Agreement) is entered into between the U.S. Environmental Protection Agency (EPA), and 53 Corporation, LLC (Respondent), a Colorado corporation and a "person" within the meaning of section 502(5) of the Clean Water Act (Act), 33 U.S.C. § 1362(5).

In the Matter of: 53 Corporation, LLC

Docket No: CWA-08-2013-0008

The EPA finds that Respondent failed to comply with the National Pollutant Discharge Elimination System (NPDES) storm water permit cited above, which was issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342, and that Respondent is responsible for the deficiencies specified in the attached Expedited Settlement Offer Deficiencies Form (Form), which is incorporated by reference. The EPA also finds, and Respondent admits, that the EPA is authorized to assess administrative penalties for NPDES permit violations pursuant to section 309 of the Act, 33 U.S.C. § 1319, and 40 C.F.R. part 22, and that the Regional Judicial Officer for EPA Region 8 has jurisdiction to issue a Final Order incorporating this Consent Agreement (Agreement) under section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b). Respondent neither admits nor denies the deficiencies specified in the Form.

This Agreement settles the EPA's civil penalty claims against Respondent for the violation(s) specified in the Form. The 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, any permit issued under the Act, or of any other federal statute or regulation. The EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. The 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 Regional Judicial Officer, unless a petition to set aside the Order approving this Agreement is filed by a commenter pursuant to section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), or a hearing is requested under section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

The parties enter into this Agreement in order to settle civil penalty liability for the violations described in the Form for a penalty of \$6,500.00. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the statements in the Form; (2) participate in 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).

APPROVED BY THE EPA:

Arturo Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 1/22/13

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 all violations cited in the Form. Respondent also certifies that, within ten (10) days of the Agreement becoming effective (the effective date is thirty (30) days from the date it is signed by the Regional Judicial Officer), Respondent shall submit a bank, cashiers or certified check, with the case name and docket number noted, for the amount specified above payable to the Treasurer, United States of America, to:

Margaret J. (Peggy) Livingston
James Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 12-21-12

APPROVED BY RESPONDENT:

STACEY HOYT
Name of individual signing (printed)
CORPORATE SECRETARY
Title of individual signing (printed)

Signature

Date: 1/17/13

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 69197-9000

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

_____ Date: _____

Hon. Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

**PUBLIC NOTICE OF PROPOSED EXPEDITED SETTLEMENT AGREEMENT AND
OPPORTUNITY TO COMMENT**

Action: The EPA is providing notice of the opportunity to comment on a proposed expedited settlement agreement. The agreement relates to alleged violations of a Clean Water Act (CWA) storm water permit at the North Sterling Reservoir State Park Marina in Logan County, Colorado which is being constructed by 53 Corporation, LLC (53 Corporation). The corporate address of 53 Corporation is 216 Malibu Street, Castle Rock, Colorado 80109.

Summary: The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), and by 40 C.F.R. §§ 22.13(b) and 22.38, to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (Respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is forty days after issuance of this notice.

The EPA and 53 Corporation have agreed to enter into an expedited settlement agreement to resolve the EPA's claims that 53 Corporation violated the requirements listed below. 53 Corporation has agreed to pay a civil penalty of \$6,500.00 to resolve its civil penalty liability for these claims. Pursuant to section 309(g)(4) of the CWA, the EPA hereby notifies the public of the opportunity to comment on this proposed penalty assessment.

EPA Docket Number for proposed expedited settlement: CWA-08-2013-0008

Alleged violations: (1) Failure to develop a stormwater management plan, (2) Failure to conduct required self-inspections from the start of the construction project on approximately October 8, 2012 until the date of the EPA's inspection on December 5, 2012 and (3) Failure to implement stormwater controls to minimize discharges of sediment and other pollutants into waters of the United States.

PUBLIC COMMENTS

Written comments on the expedited settlement agreement are encouraged and will be accepted at the address listed below for a period of forty (40) days after the publication of this notice.

Written comments submitted by the public as well as information submitted by Respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the expedited settlement agreement or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above.

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	Carol Hoyt, Registered Agent 53 Corporation, LLC 1100 Whispering Oak Drive Castle Rock, CO 80104	720-733-0192	COR03J721	
		Inspector Name:	Stephanie Gieck and Alysia Tien	
		Inspector Agency:	US EPA	
		Entrance Interview Conducted:	Yes	
		Exit Interview Conducted:	Yes	
		Exit Interview given to:	Ken Hoyt, Project Superintendent	
		Exit Interview time:	9:15	Date: 12/05/2012
LOCATION AND ADDRESS OF SITE				
2	North Sterling Reservoir State Park Marina County Road 33 and County Road 330 Logan County, Colorado 80751			

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient):	Carol Hoyt, Registered Agent
Name of Authorized Official (40 CFR 122.22):	Ken Hoyt, Project Superintendent
Inspection Date:	12/05/2012
Start Construction Date:	10/09/2012
Estimated Completion Construction Date:	01/31/2013
If Unpermitted, Number of Months Unpermitted:	N/A
Name of Receiving Water Body (Indicate whether 303(d) listed):	North Sterling Reservoir
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:	2.20 2.20
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			\$500.00 =	
SWMP REVIEW						
4 SWMP not prepared (If no SWMP, leave elements 5 - 30 blank)	The site had not prepared a SWMP. Develop and implement a SWMP meeting the requirements of the permit. Provide a copy to the EPA.	CO CGP I.B.1	Yes	1	\$5,000.00 =	\$5,000
5 SWMP prepared but prepared after construction start (# of months = # of violations)		CO CGP I.D.5.a			\$75.00 =	
6 SWMP does not identify all potential sources of pollution to include: port-a-lets, fuel tanks, staging areas, waste containers, chemical storage areas, concrete washout, paints, solvents, etc.		CO CGP I.B.2.a, I.C.1.f, & I.C.3.b			\$250.00 =	
7 SWMP does not identify all operators for the project site and the areas of the site over which each operator has control		CO CGP N/A			\$500.00 =	
8 SWMP does not have site description, as follows:						
A Nature of activity in description		CO CGP I.C.1.a			\$100.00 =	
B Intended sequence of major activities		CO CGP I.C.1.b			\$100.00 =	
C Total disturbed acreage		CO CGP I.C.1.c			\$100.00 =	
D General location map		CO CGP N/A			\$100.00 =	
E Site map		CO CGP I.C.2			\$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)		CO CGP I.C.2 a - h			\$50.00 =	
G Location/description industrial activities, like concrete or asphalt batch plants		CO CGP I.C.2.e, I.C.3.b.11, & I.C.3.c.5			\$500.00 =	

9	SWMP does not:							
A	Describe all pollution control measures (e.g. BMPs)		CO CGP I.B.2.b, I.C.3, & I.C.3.c			\$750.00	=	
B	Describe sequence for implementation		CO CGP I.C.3.c.3			\$250.00	=	
C	Detail operator(s) responsible for implementation		CO CGP I.C.3.a			\$250.00	=	
10	SWMP does not describe interim stabilization practices		CO CGP I.C.3.c.2			\$250.00	=	
11	SWMP does not describe permanent stabilization practices		CO CGP I.C.3.c.2 & I.C.4			\$250.00	=	
12	SWMP does not describe a schedule to implement stabilization practices		CO CGP I.C.3.c.2			\$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)		CO CGP N/A			\$250.00	=	
14	SWMP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CO CGP I.C.3.c.1			\$500.00	=	
15	SWMP 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		CO CGP I.C.4.a			\$500.00	=	
16	SWMP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CO CGP N/A			\$500.00	=	
17	SWMP does not describe measures to minimize off-site vehicle tracking and generation of dust		CO CGP I.C.3.c.6			\$500.00	=	
18	SWMP 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		CO CGP I.C.1.f, I.C.3.c.4, & I.C.3.c.7			\$250.00	=	
19	SWMP 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		CO CGP I.C.3.c.5			\$500.00	=	
20	SWMP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CO CGP I.C.1.g & I.C.3.c.8			\$500.00	=	
21	SWMP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CO CGP I.C.3.c.8			\$500.00	=	
22	Endangered Species Act documentation is not in SWMP		CO CGP N/A			\$500.00	=	
23	Historic Properties (Reserved)							
24	Copy of permit and/or NOI not in SWMP (count each omission under 24 as 1 violation)		CO CGP N/A			\$250.00	=	
25	SWMP 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)		CO CGP N/A			\$750.00	=	
26	SWMP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans		CO CGP N/A			\$250.00	=	
27	Copies of inspection reports have not been retained as part of the SWMP for 3 years from date permit coverage terminates		CO CGP I.D.6.b.2 & I.F.2.a			\$500.00	=	
28	SWMP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWMP/BMPs as ineffective, updates to SWMP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under 28 as 1 violation)		CO CGP I.D.5.c & I.D.6.c			\$50.00	=	
29	Copy of SWMP not retained on site		CO CGP I.D.5.b & I.F.2.b			\$500.00	=	

	A SWMP not made available upon request		CO CGP I.D.10			\$500.00	=	
30	SWMP not signed/certified		CO CGP N/A			\$500.00	=	
Subtotal SWMP Deficiencies								\$5,000
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).	No stormwater inspections have been conducted at the site. Construction started on approximately 10/9/12. According to data from the National Oceanic and Atmospheric Administration, 0.69 inches of rain fell on 10/25/12 in Sterling, Colorado approximately 11.5 miles south-southeast of the site. If the SWMP had specified inspections every 14 days and within 24 hours of a rain event, based on the construction start date, three biweekly inspections and one post storm event inspection were missed (10/23/12, 10/26/12, 11/9/12, and 11/23/12) as of the date of the EPA inspection. Provide copies of inspection reports for all inspections conducted after the EPA inspection.	CO CGP I.D.6.a	Yes	4	\$250.00	=	\$1,000
	No inspections conducted and documented (if True, then leave elements 32-39 blank)	No stormwater inspections have been conducted at the site.			TRUE	True or False		
	Number of Inspections expected if performed every 7 days:	N/A						
	Number of Inspections expected if performed bi-weekly:	4						
	If known, number of days of rainfall of >0.5"	1						
32	Inspections not conducted by qualified personnel		CO CGP I.C.3.a			\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CO CGP I.D.6.b.1			\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CO CGP I.D.6.b.1			\$50.00	=	
35	Discharge locations are not observed and inspected		CO CGP I.D.6.b.1			\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		CO CGP I.D.6.b.1			\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		CO CGP I.D.6.b.1			\$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 SWMP and schedule/dates (count each omission under 38 as 1 violation)		CO CGP I.D.6.b.2			\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CO CGP I.D.6.b.2.viii			\$50.00	=	
Subtotal Inspections Deficiencies								\$1,000
AVAILABILITY OF RECORDS								
40	Sign/notice not posted		CO CGP N/A			\$250.00	=	
	A Does not contain copy of complete NOI		CO CGP N/A			\$50.00	=	
	B Location of SWMP or contact person for scheduling viewing times where on-site location for SWMP unavailable not noted on sign		CO CGP N/A			\$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		CO CGP N/A				\$500.00	=	
42	Control measures are not properly:	There were no BMPs observed at the site except for the rip rap that was being installed to protect the marina shores from wave erosion. This rip rap also acts as a stormwater BMP during construction. There were no control measures areas of the site where rip rap had not been installed. Provide the EPA photos of example stormwater controls at the site that have been implemented from the SWMP.							
A	Selected, installed and maintained		CO CGP I.D.2 & I.D.7	Yes	1		\$500.00	=	\$500
B	Maintenance not performed prior to next anticipated storm event (count each failure to select, install, maintain each BMP as one violation)		CO CGP I.D.7 & I.D.8				\$250.00	=	
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CO CGP N/A				\$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.)		CO CGP I.C.3.c.4				\$500.00	=	
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		CO CGP N/A				\$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		CO CGP N/A				\$1,000.00	=	
A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries		CO CGP N/A				\$1,000.00	=	
B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CO CGP N/A				\$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)		CO CGP N/A				\$500.00	=	
A	Sediment not removed from sediment trap when design capacity reduced by 50% or more		CO CGP N/A				\$500.00	=	
Subtotal BMP Deficiencies									\$500

SMALL BUSINESS EVALUATION

48 Is the Owner/Operator a Small Business? Yes

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.

Total Expedited Settlement: **\$6,500**

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in the matter of **WYOMING ETHANOL, LLC.; DOCKET NO.: CWA-08-2013-0008** was filed with this office on January 22, 2013; the **FINAL ORDER** was filed on March 5, 2013.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on March 5, 2013 to:

Stacey Hoyt, Corporate Secretary
53 Corporation, LLC
1100 Whispering Oaks Drive
Castle Rock, CO 80104

And emailed to:

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

March 5, 2013



Tina Artemis
Paralegal/Regional Hearing Clerk

