



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2012 OCT 19 AM 9:21

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NWA REGION 8  
FBI

DOCKET NO.: CWA-08-2012-0031

IN THE MATTER OF:	)	
	)	
GE JOHNSON CONSTRUCTION CO.	)	FINAL ORDER
	)	
Respondent	)	

Pursuant to 40 C.F.R. § 22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Expedited 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.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 19th Day of October, 2012

Elyana R. Stein  
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8
1595 Wynkoop Street
Denver, Colorado 80202

2012 SEP -6 AM 9:38

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2012-0031, NPDES No. COR03I376

GE Johnson Construction Company, Inc. (GE) 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. Part 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(a), 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. Part 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 \$7,900.00. 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 (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 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 69197-9000
In the Matter of: GE Johnson Construction Company

Docket No: CWA-08-2012-0031

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 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).

APPROVED BY EPA:

Gwen Campbell, Acting Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 09/05/12

James Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 9/5/2012

APPROVED BY RESPONDENT:

Name (print): Dave M. Ivis

Title (print): Executive Vice President

Signature:  Date: 8-30-12

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

\_\_\_\_\_ Date \_\_\_\_\_  
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 Shea Garfield County Office Building in Parachute, Colorado which is being constructed by GE Johnson Construction Company (GEJ). The corporate address of GEJ is 25 North Cascade Avenue Suite 400, Colorado Springs, Colorado 80903.

**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 (the 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 GEJ have agreed to enter into an expedited settlement agreement to resolve EPA's claims that GEJ violated the requirements listed below. GEJ has agreed to pay a civil penalty of \$7,900.00 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-08-2012-0031

Alleged violations: (1) Failure to conduct required self-inspections from April 30, 2012 to the date of EPA's inspection on July 18, 2012, (2) Failure to maintain a complete storm water management plan, (3) Failure to maintain an up-to-date storm water management plan and site map, and (4) Failure to maintain best management practices 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>.

**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	Mike Kosters, Project Manager GE Johnson Construction Company, Inc. 25 N. Cascade Ave., Suite 400 Colorado Springs, CO 80903	719-473-5321	COR03I376
		Inspector Name:	Natasha Davis
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Kirk Sousman, Superintendent
		Exit Interview time:	15:45 Date: 07/18/2012
LOCATION AND ADDRESS OF SITE			
2	Shea Garfield County Office Building Diamond Ave. and Parachute Park Ave. Parachute, Colorado 81635		

FACILITY DESCRIPTION / CONTACT NAMES			
Name of Site Contact (ESO Worksheet recipient):		Mike Kosters, Project Manager	
Name of Authorized Official (40 CFR 122.22):		Kirk Sousman, Superintendent	
Inspection Date:		07/18/2012	
Start Construction Date:		02/01/2012	
Estimated Completion Construction Date:		08/31/2012	
If Unpermitted, Number of Months Unpermitted:		N/A	
Name of Receiving Water Body (Indicate whether 303(d) listed):		Colorado River	
Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:		3.51	6.05
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 =	
SWPPP REVIEW						
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		EPA CGP 3.1.A			\$5,000.00 =	
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		EPA CGP 3.1.A			\$75.00 =	
6 SWPPP 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.	SWMP does not identify the concrete mixer as a potential source of pollution. <b>The SWMP needs to be updated to reflect current site conditions.</b>	CO CGP 1.C.3.b	Yes	1	\$250.00 =	\$250
7 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control	SWMP does not identify the administrator. <b>The SWMP needs to be updated to include the administrator.</b>	CO CGP 1.C.3.a	Yes	1	\$500.00 =	\$500
8 SWPPP does not have site description, as follows:	The site map did not identify the location of a concrete mixer, dumpsters, or port-a-lets. A silt fence was shown on the site map around the soil stockpile, but no silt fence was observed in this location.					
A Nature of activity in description		EPA CGP 3.3.B.1			\$100.00 =	
B Intended sequence of major activities		EPA CGP 3.3.B.2			\$100.00 =	
C Total disturbed acreage		EPA CGP 3.3.B.3			\$100.00 =	
D General location map	Storm drain inlet protection was shown on the site map on one of the two storm drain inlets along Diamond Ave., but inlet protection was observed on both inlets.	EPA CGP 3.3.B.4			\$100.00 =	
E Site map		EPA 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 8F as 1 violation)	Storm drain inlet protection was shown on the site map on one of the two storm drain inlets along Diamond Ave., but inlet protection was observed on both inlets. The site map showed a sediment trap near the eastern corner of the site and a diversion structure around the soil stockpile, but they were not observed on-site. Vehicle track-out pads had been removed from the site, but this was not reflected on the site map. The concrete washout shown on the site map had been removed and the area around the concrete mixer was being used for concrete washout. <b>The site map needs to be updated to reflect current site conditions.</b>	CO CGP 1.C.2.a-h	Yes	8	\$50.00 =	\$400
G Location/description industrial activities, like concrete or asphalt batch plants		CO CGP 1.C.2.e	Yes	1	\$500.00 =	\$500
9 SWPPP does not:						

	A Describe all pollution control measures (e.g. BMPs)		EPA CGP 3.4.A				\$750.00	=	
	B Describe sequence for implementation		EPA CGP 3.4.A				\$250.00	=	
	C Detail operator(s) responsible for implementation		EPA CGP 3.4.A				\$250.00	=	
10	SWPPP does not describe interim stabilization practices		EPA CGP 3.4.B				\$250.00	=	
11	SWPPP does not describe permanent stabilization practices		EPA CGP 3.4.B				\$250.00	=	
12	SWPPP does not describe a schedule to implement stabilization practices		EPA 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)		EPA CGP 3.4.C.1-3				\$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		EPA 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		EPA 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		EPA CGP 3.4.F				\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		EPA 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		EPA 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		EPA 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		EPA CGP 3.5				\$500.00	=	
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		EPA CGP 3.5				\$500.00	=	
22	Endangered Species Act documentation is not in SWPPP		EPA 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)		EPA CGP 3.8				\$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)		EPA 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		EPA 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		EPA 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 28 as 1 violation)	Vehicle track-out pads had been used on-site on the eastern corner and the southeast corner, but they had been removed; the SWMP was not updated. The SWMP did not identify the inlet protection along Diamond Ave, the use of a roll off dumpster, and the concrete washout or concrete batch plant. The SWMP described the use of sediment traps, but the facility decided not to use this BMP and did not modify the plan. <b>The SWMP needs to be updated to reflect current site conditions.</b>	CO CGP 1.D.5.a	Yes	7	X	\$50.00	=	\$350
29	Copy of SWPPP not retained on site		EPA CGP 3.12.A				\$500.00	=	
	A SWPPP not made available upon request		EPA CGP 3.12.C				\$500.00	=	

30	SWPPP not signed/certified		EPA CGP 3.12.D			\$500.00	=	
<b>Subtotal SWPPP Deficiencies</b>								<b>\$2,000</b>
<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).	No inspections had been conducted since 4/30/12. As such, five biweekly inspections were missed. <b>Provide copies of inspection reports for all inspections conducted after the EPA inspection on July 18, 2012.</b>	CO CGP 1.D.6.a	Yes	6	\$250.00	=	\$1,500
	No inspections conducted and documented (if True, then leave elements 32-39 blank)							True or False
	Number of Inspections expected if performed every 7 days:							
	Number of Inspections expected if performed bi-weekly:	12						
	If known, number of days of rainfall of >0.5"							
32	Inspections not conducted by qualified personnel		EPA 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	The upper portion of the site was not inspected where equipment and material storage is located. <b>Improve your inspection practice by inspecting the entire construction site.</b>	CO CGP 1.D.6.b.1	Yes	12	\$50.00	=	\$600
34	All pollution control measures not inspected to ensure proper operation	BMPs designated for sediment stockpiles were not inspected (e.g., silt fence surrounding the stockpile, diversion structures, and sediment trap). <b>Improve your inspection practice by inspecting all BMPs listed in the SWMP and site map.</b>	CO CGP 1.D.6.b.1	Yes	12	\$50.00	=	\$600
35	Discharge locations are not observed and inspected	The inspections did not include the storm drain on Parachute Park Blvd. and Highway 24 and 6, which is the discharge location for any track-out on Parachute Park Blvd. <b>Improve your inspection procedure by inspecting all discharge locations.</b>	CO CGP 1.D.6.b.1	Yes	12	\$50.00	=	\$600
36	For discharge locations that are not accessible, nearby locations are not inspected		EPA CGP 3.10.E.			\$50.00	=	
37	Entrance/exit not inspected for off-site tracking	The upper portion of the site was not inspected where two access points are located. <b>Improve your inspection procedure by inspecting all access points for off-site tracking.</b>	CO CGP 1.D.6.b.1	Yes	12	\$50.00	=	\$600
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)		EPA CGP 3.10.G			\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		EPA CGP 3.10.G			\$50.00	=	
<b>Subtotal Inspections Deficiencies</b>								<b>\$3,900</b>
<b>AVAILABILITY OF RECORDS</b>								
40	Sign/notice not posted		EPA CGP 3.12.B			\$250.00	=	
	A Does not contain copy of complete NOI		EPA 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		EPA CGP 3.12.B			\$50.00	=	
<b>Subtotal Records Deficiencies</b>								<b>\$0</b>

BEST MANAGEMENT PRACTICES									
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		EPA CGP 3.13.F				\$500.00	=	
42	Control measures are not properly:	The area around the concrete mixer was being used for concrete washout, and the washout that was not installed to the BMP specifications listed in the SWMP. In addition, concrete waste was observed on the ground, on the stockpile, and near a newly installed light pole base on the south side of the site. <b>The concrete washout needs to be installed to specifications listed in the SWMP and all concrete waste needs to be contained within the washout.</b> No vehicle track-out pad or other tracking control was implemented on the northwest corner of the site, where vehicle tracking indicated the area was used as a site access/exit point. <b>A BMP should be utilized to avoid sediment discharges along Parachute Park Ave.</b> The inlet protection along Diamond Ave. consisted of rock socks over the inlets, but the rock sock on one inlet did not cover the entire drain. The rock socks were pushed into the drain. <b>The inlet protection needs to be installed and maintained per the SWMP.</b>							
	A Selected, installed and maintained		CO CGP 1.D.7	Yes	4		\$500.00	=	\$2,000
	B Maintenance not performed prior to next anticipated storm event (count each failure to select, install, maintain each BMP as one violation)		EPA 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		EPA 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.)		EPA CGP 3.13.C				\$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		EPA CGP 3.13.D				\$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		EPA CGP 3.13.E.1				\$1,000.00	=	
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries		EPA CGP 3.13.E.2				\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		EPA CGP 3.6.C				\$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)		EPA CGP 3.13.E.3				\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		EPA CGP 3.6.C				\$500.00	=	
Subtotal BMP Deficiencies									\$2,000

**SMALL BUSINESS EVALUATION**

48 Is the Owner/Operator a Small Business?

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: **\$7,900**

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in the matter of **G. E. JOHNSON CONSTRUCTION COMPANY, INC.;** **DOCKET NO.: CWA-08-2012-0031**, was filed with the Regional Hearing Clerk on September 6, 2012; the **FINAL ORDER** was filed on October 19, 2012.

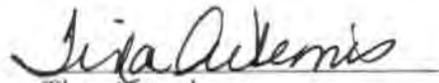
Further, the undersigned certifies that a true and correct copy of the document was delivered to Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on October 19, 2012, to:

David Ivis, Executive Vice President  
GE Johnson Construction Company, Inc.  
25 N. Cascade Ave., Suite 400  
Colorado Springs, CO 80903

And emailed to:

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

October 19, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk