



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2008-0035, NPDES No.:MO-R109147

08 MAY 12 PM 12:54

ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

Lacey Brothers Construction, Inc. ("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 \$11,650. 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
Fines and Penalties
Cincinnati Finance Center
PO Box 979007
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:

William A. Spratlin Date: 5/9/08
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): THOMAS F. LACEY
Title (print): SECRETARY
Signature: [Signature] Date: 14 MAR 08

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:

Robert L. Patrick Date: May 12, 2008
Robert L. Patrick
Regional Judicial Officer

Expedited Settlement Offer Worksheet
Deficiencies Form
Consult instructions regarding eligibility criteria and procedures prior to use



MO-R109

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number
1	Lacey Brothers Construction, Inc. 3048 S. Clifton Ave. Springfield, MO 65807	(417) 823-9500	MO-R109147
		Inspector Name:	Lyle Cowles
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	<input type="checkbox"/> Yes <input type="checkbox"/> No
		Exit Interview Conducted:	<input type="checkbox"/> Yes <input type="checkbox"/> No
LOCATION AND ADDRESS OF SITE		Exit Interview given to:	Tom Lacey
2	Laurel Hill Estates South of East Hwy 14 Ozark, MO 65721	Exit Interview time:	12:00 Date: 09/12/2007

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient): Tom Lacey	
Name of Authorized Official (40 CFR 122.22): Tom Lacey	
Inspection Date: 09/12/2007	
Start Construction Date: 01/01/2006	
Estimated Completion Construction Date:	
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed): Elk Valley Creek	
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 30.00 45.00	
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	10 CSR 20-6.010		X	\$500.00	=
SWPPP REVIEW							
4 SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	MOGP p.5(7)			\$5,000.00	=
5 SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	MOGP p.5(7)		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.		CGP 3.1.B	MOGP p.7(8)(i)			\$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	N/A				=
8 SWPPP does not have site description, as follows:							=
A Nature of activity in description		CGP 3.3.B.1	MOGP p.5(8)(a)			\$100.00	=
B Intended sequence of major activities		CGP 3.3.B.2	MOGP p.6(8)(c)			\$100.00	=
C Total disturbed acreage		CGP 3.3.B.3	MOGP p.5(8)(a)			\$100.00	=
D General location map		CGP 3.3.B.4	MOGP p.5(8)(a)			\$100.00	=
E Site map		CGP 3.3.C	MOGP p.6(8)(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)		CGP 3.3.C.1-8	MOGP p.6(8)(c) & (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	MOGP p.6(8)(c)			\$750.00	=
B Describe sequence for implementation		CGP 3.4.A	MOGP p.6(8)(c)			\$250.00	=
C Detail operator(s) responsible for implementation		CGP 3.4.A	N/A				=
10 SWPPP does not describe interim stabilization practices		CGP 3.4.B	MOGP p.6(8)(f)			\$250.00	=
11 SWPPP does not describe permanent stabilization practices		CGP 3.4.B	MOGP p.6(8)(f)			\$250.00	=
12 SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	MOGP p.6(8)(c)			\$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	MOGP p.7(8)(g)					\$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	MOGP p.7(8)(j)					\$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	MOGP p.7(8)(i)					\$500.00	=		
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	MOGP p.6(8)(f)					\$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	SWPPP did not list specific locations for materials and equipment.	CGP 3.4.H	MOGP p.7(8)(i)		1			\$250.00	=	\$250	
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		CGP 3.5	MOGP p.2(2)					\$500.00	=		
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5	N/A								
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	N/A								
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	N/A								
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	MOGP p.8(10)					\$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)	SWPPP and grading sheet did not match erosion controls that the inspector observed on site.	CGP 3.11.C	MOGP p.7(9)		1	X		\$50.00	=	\$50	
29	Copy of SWPPP not retained on site		CGP 3.12.A	MOGP p.9(4)					\$500.00	=		
	A SWPPP not made available upon request		CGP 3.12.C	MOGP p.9(1)					\$500.00	=		
30	SWPPP not signed/certified		CGP 3.12.D	N/A								
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).	Failed to perform inspections within 24 hours of the following rain events: 1/10/06, 3/9/06, 4/2/06, 4/7/06, 4/25/06, 4/30/06, 5/5/06, 5/11/06, 5/22/06, 6/18/06, 7/11/06, 8/7/06, 8/11/06, 9/18/06, 10/17/06, 11/16/06, 11/30/06, 2/13/07, 3/21/07, 4/25/07, 5/16/07, 5/26/07, 6/8/07, 6/13/07, 6/19/07, 6/30/07, 7/10/07, 8/25/07, 9/8/07	CGP 3.10.A, 3.10.B	MOGP p.8(10)		29	X		\$250.00	=	\$7,250	
	No inspections conducted and documented (if True, then leave elements 32-39 blank)			MOGP p.8(10)					True or False			
	Number of inspections expected if performed every 7 days:	88										
	Number of inspections expected if performed bi-weekly:	44		N/A								

		If known, number of days of rainfall of >0.5"											
32		Inspections not conducted by qualified personnel		CGP 3.10.D	N/A								
33		All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 3.10.E	MOGP p.8(10)						\$50.00	=	
34		All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	MOGP p.8(10)						\$50.00	=	
35		Discharge locations are not observed and inspected		CGP 3.10.E	MOGP p.8(10)						\$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	MOGP p.8(10)						\$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)	Site inspection reports missing location of sediment/pollutant discharge, and weather information.	CGP 3.10.G	MOGP p.8(10)		2	X			\$50.00	=	\$100
39		Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G	MOGP p.8(10)			X			\$50.00	=	
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	MOGP p.7(8)(g)						\$500.00	=	
42		Control measures are not properly:	1) Failure to install BMP for trackout; 2) Failure to designate area for concrete washout; 3 & 4) Failure to maintain stormwater inlets at lots 13 and 15; 5) Failure to maintain rock check dam										
	A	Selected, installed and maintained		CGP 3.13.A	MOGP p.5(7) & p.8(11)		5				\$500.00	=	\$2,500
	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	N/A								
43		When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	Off-site migration of sediment on west side of west property boundary.	CGP 3.13.B	MOGP p.4(6)	No	1				\$500.00	=	\$500
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.)	Trash and waste piles in at least 10 locations as documented by pictures 26-35. Unsecured drum of "Strip-eez" on trailer SE corner of E Bain St. and S 20th Ave.	CGP 3.13.C	MOGP p.4(4)		1				\$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	Failure to stabilize vicinities of detention basin (E Rainey Street) and S Thomas Drive south of Bain Street.	CGP 3.13.D	MOGP p.6(d)		1				\$500.00	=	\$500
		*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		CGP 3.13.E.1	MOGP p.7(8)(h)						\$1,000.00	=	
	A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope		CGP 3.13.E.2	MOGP p.7(8)(h)						\$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	MOGP p.7(8)(f) & (g)						\$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	Is the Owner/Operator a Small Business?						
	<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: **\$11,650**

* Requires Corrective Action

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

*** Missouri State Operating Permit General Permit, Issued by MDNR on March 8, 2002 - <http://www.dnr.mo.gov/env/wpp/permits/wpcpermits-stormwater.htm>

IN THE MATTER OF Lacey Brothers Construction, Inc., Respondent
Docket No. CWA-07-2008-0035

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 Gonzales
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Mr. Thomas F. Lacey, Secretary
Lacey Brothers Construction, Inc.
3048 S. Clifton Avenue
Springfield, Missouri 65807

Dated: 5/12/08


Kathy Robinson
Hearing Clerk, Region 7