

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

### EXPEDITED SETTLEMENT AGREEMENT

09 AUG 24 PM 1: 18

Docket Number: CWA-07-2009-0075, NPDES No.:KSR-104545

ERVIRORMENTAL PROTECTION or future civil or criminal violation of the Act or collany other within the meaning of Section 502(5) of the Clean Water Act federal statute or regulation. EPA does not waive its right to result to the statute of the clean waiter and the statute of the clean waiter and the statute of the clean waiter and the clean waiter and the clean waiter are the clean waiter and the clean waiter and the clean waiter are the clean waiter and the clean waiter and the clean waiter are the clean waiter are the clean waiter and the clean waiter are the clean waiter are the clean waiter are the clean waiter and the clean waiter are a compliance order for any uncorrected deficiencies or violation(s)

appropriate.

("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.

Heartland Midwest, LLC ("Respondent") is a "person,"

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 \$3,150. 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. Having determined that this Agreement is authorized by law, with this Agreement detailing the specific actions taken to correct IT IS SO ORDEREJ the violations cited herein.

Respondent certifies that, within ten (10) days of receiving notice from EPA that the Agreement is effective thirty Robert L. Patrick (30) days from the date it is signed by the Appropriate Official, 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. EPA Fines and Penalties Cincinnati Finance Center PO Box 979077 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 EPA does not waive its rights to take any Agreement. enforcement action against Respondent for any other past, present,

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.

described in the Form. EPA has determined this Agreement to be

APPROVED BY EPA

Director

Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Member Title (print):

Signature:

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.

Date August 24 2009

## Expedited Settlement Offer Worksheet

Deficiencies Form

Consult instructions regarding eligibility criteria and procedures prior to use

KS-S-MCST-0701-1



LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number
1 Heartland Midwest, LLC	913-397-9911	KSR-104545
15795 S Mahaffie Street, Suite 100		
Olathe, KS 66062	Inspector Name:	St Germain
	Inspector Agency:	US EPA
	Entrance Interview Conducted:	ÿ
	Exit Interview Conducted:	Yes
LOCATION AND ADDRESS OF SITE	Exit Interview given to:	Jeff Hunt
2 Lauren's Bay Villas, Phase 2	Exit Interview time:	12:00 Date: 07/24/2008
SW 44th and Manamaker		
Topeka, KS		
	*	

	FAC	ILITY DESCRIPTION / CONTACT NAMES	
		Name of Site Contact (ESO Worksheet recipient):	Doug Whitman
		Name of Authorized Official (40 CFR 122.22):	
	ा	Inspection Date:	07/24/2008
		Start Construction Date:	10/01/2007
	:	Estimated Completion Construction Date:	09/01/2008
		If Unpermitted, Number of Months Unpermitted:	
		Name of Receiving Water Body (Indicate whether 303(d) listed):	Tributary to West Branch of Shunganunga Creek
	:	Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:	
		Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	

				A** I*	04-4-034-4	R	No. of	Dollar	
	٠,	PERMIT COVERAGE	Notes	Citation Reference**	State Citation Reference***	C A*	Deficien- cies	Amount	
3		Operator unpermitted formonths (# months unpermitted equals number of violations)		CWA 301	KAR 28-16-153			X \$500.00	
		SWPPP REVIEW	1						
- 4		SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)	en gode en er erzene en en 1903 han en	CGP 3.1.A	KSGP Part 7			X \$5,000.00	
5		SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3,1,A	KSGP Part 7	1921 July 1931		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	KSGP Part 7.2.7			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		CGP 3.3.A	KSGP Part 7.1		1	X \$500.00	<b>=</b> \$500
8		SWPPP does not have site description, as follows:	Site map does not show areas of disturbance or equipment storage areas.						
	Α	Nature of activity in description		CGP 3.3.B.1	KSGP Part 7.2.1	Est.		X \$100.00	=
	В	Intended sequence of major activities		CGP 3.3.B.2	KSGP Part 7.2.1			X \$100.00	
-	C	Total disturbed acreage		CGP 3.3.B.3	KSPG Part 7.2.1			X \$100.00	=
	D	General location map		CGP 3.3.B.4	KSPG Part 7.2.1	No.		X \$100.00	25
	ε	Site map	rica Grandila Sales de C Cristo Singalio (Sales de Chil	CGP 3.3.C	KSPG Part 7.2.1			X \$500.00	=
	E	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	KSPG Part 7.2.1		2	X \$50.00	± \$100
	O	Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D	N/A				
9	900	SWPPP does not:	and the state of t			1500			
	Α	Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A	KSGP Part 7.2.2			X \$750.00	
	В	Describe sequence for implementation		CGP 3.4.A	KSPG Part 7.2.2			X \$250.00	=
	С	Detail operator(s) responsible for implementation		CGP 3.4.A	N/A		12.00		

10	1. 1	SWPPP does not describe interim stabilization		CGP 3.4.B	KSGP Parts 7.2.3		X	\$250.00	) =		
11		practices SWPPP does not describe permanent stabilization	<u>,                                     </u>	CGP 3.4.B	& 7.2.4 KSGP Parts 7.2.3		X	\$250.00	1=		
12		practices SWPPP does not describe a schedule to		CGP 3.4.B	& 7.2.4 KSGP Part 7.2.2		X	\$250.00	1=1		
13		implement stabilization practices Following dates are not recorded: major grading		CGP 3.4.C.1-3	N/A	00 II			-		
		activities; construction temporarily or permanently ceased; stabilization measures initiated (count									
		each omission under 13 as 1 violation)									
14		SWPPP does not have description of structural practices to divert flows from exposed soils, retain		CGP 3.4.D	KSGP Part 7.2.4		X	\$500.00	) =		
15	165	flows, or limit runoff from exposed areas SWPPP does not have a description of measures		CGP 3.4.E	KSGP Part 7.2.4		X	\$500.00	) =		
13		that will be installed during the construction process to control pollutants in storm water		00.07.0							
		discharges that will occur AFTER construction operations have been completed									
. 16		SWPPP does not describe measures to prevent		CGP 3.4.F	KSGP Part 7.2.4	9110	X	\$500.00	) =		
		discharge of solid materials to waters of the US, except as authorized by 404 permit		000040	K60D D-4 7 0 7			\$500.00			
17		SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	KSGP Part 7.2.7			. #300.01	1		
18		SWPPP does not include description of		CGP 3.4.H	KSGP Part 7.2.7		X	\$250.00	1=		
		construction or waste materials expected to be stored on site w/updates re: controls used to		- Angeles and a second a second and a second a second and							
19		reduce pollutants from these materials  SWPPP does not have description of pollutant	From Market Control (1997)	CGP 3,4.I	N/A	1505	1500 (200 0250) 1500 (200 0250) 1500 (200 0250)		1		
		sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls						,		1	
		to reduce pollutants from these materials									
20		SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.8		CGP 3.5	N/A	3 10					
21		of the CGP SWPPP does not identify/ensure implementation		CGP 3.5	N/A		ALL DESCRIPTION		+	——	
		of pollution prevention measures for non-storm water discharges					555-253-253 575-253-253				
22		Endangered Species Act documentation is not in SWPPP		CGP 3.7	KSGP Part 7.2.1		X	\$500.00	0 =		
23	14,	Historic Properties (Reserved)									
24		Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)	is Posta i Superiore de la composició de l Composició de la composició de	CGP 3.8	N/A		March Control				
25		SWPPP is not consistent with requirements specified in applicable sediment and erosion site		CGP 3.9	N/A		\$50,000 to the				
		plans or site permits, or storm water management plans or site permits approved by State, Tribal or				9175					
		local officials (e.g., MS4 requirements)									
26		SWPPP has not been updated to remain consistent with changes applicable to protecting	nyanagingkys espisa napatyuk as 16, 60. Santaga kasasa na santaga kasasa	CGP 3.9	N/A	250 PS					
		surface waters in State, Tribal or local erosion plans						***************************************			
27		Copies of inspection reports have not been retained as part of the SWPPP for 3 years from		CGP 3.10.G	KSGP Part 9.1		X 22.55.55.55.	\$500.00	0 =		
		date permit coverage terminates  SWPPP has not been updated/modified to reflect		CGP 3.11.C	KSGP Part 7.1	1000 3230	Paragonia y	\$50.00	0 =	\$50	
28		change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective,		30. 3.11.5				1			
	14.	updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection									
		(count each omission under under 28 as 1 violation)									
29		Copy of SWPPP not retained on site  A SWPPP not made available upon request		CGP 3.12,A CGP 3.12,C	KSGP Part 7.1 KSGP Part 7.1		I X	\$500.00			
30		SWPPP not signed/certified		CGP 3.12.D	KSGP Part 9.5		3 2	\$500.00		\$500	
<del> </del>	par 10			1	<u></u>	L				•	
31		INSPECTIONS Inspections not performed and documented either		CGP 3.10.A,	KSGP Part 7.2.8		) 	\$250.00	0 =		
		once every 7 days, or once every 14 days and within 24 hours after storm event greater than		3.10.B							
		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 conducted and documented (if			<u> </u>		2 HPS 32 1 4 5 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7	True (			
		True, then leave elements 32-39 blank)		<u></u>		18834		Fals	-c		
							•				
				1			•				

		Number of Inspections expected if performed every 7 days:	, ,			10 AV	,			
	-	Number of inspections expected if performed bi-				200				
		weekly:								
		If known, number of days of rainfall of >0.5"						113		
32		Inspections not conducted by qualified personnel		CGP 3.10.D	N/A				\$50,00	***
33		All areas disturbed by construction activity or used for storage of materials and which exposed to		CGP 3.10.E	KSGP Part 7.2.8			Х	\$50.00	=
24		precipitation not inspected  All pollution control measures not inspected to		CGP 3.10.E	KSGP Part 7,2.8			X	\$50.00	=
34		ensure proper operation		CGP 3.10.E	KSGP Part 7.2.8			ŷ	\$50.00	
35		Discharge locations are not observed and inspected								<u> </u>
36		For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	KSGP VII p.9	100		Ľ.	\$50.00	=
37		Entrance/exit not inspected for off-site tracking		CGP 3.10.E	N/A					
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	KSGP Part 7.2.8			X	\$50.00	7
39		Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)		CGP 3.10.G	KSGP Part 7.2.8			X	\$50.00	=
		AVAILABILITY OF RECORDS					,			
40		Sign/notice not posted		CGP 3.12.B	N/A	30.25				
	A	Does not contain copy of complete NOI		CGP 3.12.B	KSGP Parts 5 & 9.1		SE SE GX	X	\$50.00	=
	В	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		CGP 3.13.F	KSGP Parts 7 & 7.2.4			Х	\$500.00	m
42	-	non-erosive flow to receiving water Control measures are not properly:	Failure to install [-hooks in accordance							
42		Selected, installed and maintained	with conditions of permit; failure to install	CGP 3.13.A	KSGP Parts 7.1	100	3	Х	\$500.00	= \$1,5
		Maintenance not performed prior to next	silt fence according to SWPPP; failure to maintain silt fence that was installed.	CGP 3.6.B	& 7.2.1 KSGP Parts 7.1			X	\$250.00	=
	R	anticipated storm event		OGF 0.0.D	& 7.2.1				<b>V.</b>	
		(count each failure to select, install, maintain each BMP as one violation								
43		When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site		CGP 3.13.B	N/A					
44	HARRY Marie	impacts Litter, construction debris, and construction		CGP 3.13.C	KSGP Part 7.2.8	92.455 27.555 27.555		х	\$500.00	=
		chemicals exposed to storm water are not prevented from becoming a pollutant source			***************************************					
	85/5	(e.g. screening outfalls, pickup daily, etc.) Stabilization measures are not initiated as soon as		CGP 3.13.D	KSGP Part 7.2.3	1000000 100000000000000000000000000000	4	x	\$500.00	= \$5
.45		Stabilization measures are not mitiated as soon as practible on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation							•	
		*Exceptions:			N/A					
		(a) Snow or frozen ground conditions			N/A			Ш		
		(b) Activities will be resumed within 14 days			N/A					
	103	(c) Arid or Semi-arid areas (<20 inches per	Ross Commission and Commission Commission		N/A				04 000 00	
	1	Common Drainage of 10+ acres does not have a sedimentation basin for the 2 year, 24 hour storm,	The paleon (Alberton) (Course on No. 1)	CGP 3.13.E.1	KSGP Part 7.2.5			ľ	\$1,000.00	=
46								. 6		1
46		or 3600 cubic ft. storage per acre drained			LOOP OF THE	2,035		Ų.	\$4.000.00	
46				CGP 3.13.E.2	KSGP Part 7.2.5			X	\$1,000.00 \$500.00	=

47 Common Drainage less than 10 acres does not have sediment traps, sitt 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	KSGP Parts 7.1, 7.2.3 & 7.2.4		X \$500.00	
A Sediment not removed from sediment trap when design capacity reduced by 50% or more	CGP 3.6.C	KSGP Part 7.2.5		X \$500.00	
SMALL BUSINESS EVALUATION CORRESPONDENCE					
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.					
* Requires Corrective Action			Total Expedit	ed Settlement:	\$3,15

<sup>\*\*\*</sup> Kansas Water Pollution Control General Permit and Authorization to Discharge - Issued by KDHE on January 2, 2007 - http://www.kdheks.gov/stormwater/# CURRENT - Effective

# IN THE MATTER OF Heartland Midwest, LLC, Respondent Docket No. CWA-07-2009-0075

### 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:

Sarah LaBoda Assistant Regional Counsel Region VII United States Environmental Protection Agency 901 N. 5<sup>th</sup> Street Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

R. Lee Chapman, Member Heartland Midwest, LLC 15795 S. Mahaffie Street, Suite 100 Olathe, Kansas 66062

Dated: 6240

athy Robinson

Hearing Clerk, Region 7