



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 8
1595 Wynkoop Street
Denver, Colorado 80202

2014 JAN 14 AM 10:09

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-08-2014-0010 NPDES Permit No. COR03D254

FILED REGION VIII HEADQUARTERS

This Expedited Settlement Agreement (Agreement) is entered into between the U.S. Environmental Protection Agency (EPA), and Elite Properties of America IV, Inc. (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).

Note the following on the payment:

In the Matter of: Elite Properties of America IV, Inc.

Docket No: CWA-08-2014-0010

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 \$ 11,450.00. 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:

Gwenette C. Campbell, Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice
Date: 01/06/14

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:

James Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice
Date: 1/8/14

APPROVED BY RESPONDENT:

Jeffrey B. Smith
Name of individual signing (printed)
Registered AGENT
Title of individual signing (printed)
Date: 2-23-13
Signature

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

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	Jeffrey B. Smith, Registered Agent Elite Properties of America IV, Inc. 6385 Corporate Drive, Suite 200 Colorado Springs, CO 80919	719.592.9333	COR03D254
		Inspector Name:	David Gwisdalla and Natasha Davis
		Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Mark Whittle, Assistant Developer
		Exit Interview time:	17:10 Date: 10/29/2013
LOCATION AND ADDRESS OF SITE			
2	Flying Horse Ranch Development - Turin Filing 1&2 Latitude: 39.017306° N / Longitude: 104.78479° W El Paso County, Colorado		

FACILITY DESCRIPTION / CONTACT NAMES	
	Name of Site Contact (ESO Worksheet recipient): Jeffrey B. Smith, Registered Agent
	Name of Authorized Official (40 CFR 122.22): Mark Whittle, Assistant Developer
	Inspection Date: 10/29/2013
	Start Construction Date: 11/01/2011
	Estimated Completion Construction Date: 08/31/2014
	If Unpermitted, Number of Months Unpermitted: N/A
	Name of Receiving Water Body (Indicate whether 303(d) listed): City of Colorado Springs MS4 - Monument Creek
	Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan: 13.00 51.80
	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)		CO CGP I.B.1			\$5,000.00	=
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.	The SWMP did not discuss the storage of stucco mortar mix onsite. Stucco was observed being stored onsite and had been spilt into the curb and gutter along Delicate Court (photo 1768). ESO RCA: Amend the SWMP and provide a copy of the update SWMP to the EPA. Removed based upon 12/9/2013 input from Classic Homes showing that in fact chemical storage was outlined in the SWMP rather than stucco mortar mix. No further action required and the deficiency was removed from consideration as part of the SWMP deficiencies.	CO CGP I.B.2.a, I.C.1.f, & I.C.3.b	No	0	\$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:	8.F.1. The site map did not illustrate where all the structural controls were utilized onsite (photos 1781-1783). ESO RCA: None, an updated site map was submitted to the EPA on 11/1/2013.					
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	No	1	\$50.00	= \$50

	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:	9.A, Silt fence was being used for protection of soil stockpiles (photo 1780). This structural practice was not described in the SWMP. ESO RCA: Amend the SWMP to include the use of silt fence to protect soil stockpiles. Provide a copy of the updated SWMP to the EPA.							
	A	Describe all pollution control measures (e.g. BMPs)		CO CGP I.B.2.b, I.C.3, & I.C.3.c	Yes	1	X	\$750.00	=	\$750
	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)	A copy of the permit was not maintained with the SWMP. ESO RCA: Ensure a copy of the permit is kept with the SWMP.	CO CGP N/A	Yes	1	X	\$250.00	=	\$250
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)	The SWMP stated that silt fence will be utilized along all perimeters. This was not observed implemented onsite. Mr. Sherwood noted that this was for the original grading operations and not the construction of the homes. ESO RCA: Amend the SWMP and provide a copy of the updated SWMP to the EPA. Please note that a pen and ink change is acceptable.	CO CGP I.D.5.c & I.D.6.c	Yes	1	X	\$50.00	=	\$50
29	Copy of SWMP not retained on site	The SWMP is kept off site and was provided to EPA for review during the inspection. ESO RCA; Ensure the SWMP is kept on site or obtain approval of another location from CDPHE.	CO CGP I.D.5.b & I.F.2.b	Yes	1		\$500.00	=	\$500
	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									\$1,600

INSPECTIONS

31	Inspections not performed and documented either once every 7 days, or once every 14 days and within 24 hours after storm event that causes surface erosion (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).	Stormwater inspections were conducted at the site and documented. Inspection records from January 2012 through October 2013 were reviewed during the inspection. The below inspections were not conducted every 14 days or after a precipitation event causing erosion. The operator did not conduct or document the following eight required self inspections due to precipitation events: 9/14/2012, 9/27/2012, 5/11/2013, 7/12/2013, 7/26/2013, 8/24/2013, 9/13/2013, and 9/14/2013. The operator also did not conduct or document the following 10 required 14-day self inspections: 4/2/2012, 4/15/2012, 5/8/2012, 8/14/2012, 2-25-2013 , 3/26/2013, 6/18/2013, 7-2-2013 , 7-19-2013 , and 8/13/2013. ESO RCA: Ensure a process is put in place to conduct and document future self inspections after qualifying precipitation events. Amended based upon input from Classic Homes illustrating inspections were conducted relevant to the dates removed from consideration above; number of violations decreased to 15.	CO CGP I.D.6.a	Yes	15	X	\$250.00	=	\$3,750
	No inspections conducted and documented (if True, then leave elements 32-39 blank)				FALSE		True or False		
	Number of Inspections expected if performed every 7 days:	N/A							
	Number of Inspections expected if performed bi-weekly:	48							
	If known, number of days of rainfall of >0.5"	18							
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)	None of the 42 self inspection reports, reviewed by the inspectors onsite (for the period January 2012 to the date of the inspection) were signed in accordance with the permit. The permit requires that, "After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief." ESO RCA: Ensure self inspection report templates include a statement and a signature section to ensure this permit requirements are met. Provide a copy of an updated and completed self inspection report form for the site illustrating that these changes were made.	CO CGP I.D.6.b.2.viii	Yes	42	X	\$50.00	=	\$2,100
Subtotal Inspections Deficiencies									\$5,850
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:	42.A.1. Track-out and sediment were noted on the streets and in the gutters, this material was not removed/swept in accordance with the SWMP (photos 1761-1771, 1773-1776, and 1778-1779); 42.A.2. The straw wattle and heavy weight foam wattles were not installed or maintained appropriately at five separate locations: lots 10, 15-16, 33-34, 40 and along the back of the curb on the west side of Veneto Way (photos 1763, 1766, 1772, 1776, 1778, and 1779); 42.A.3 The concrete washout was recently relocated (i.e., the day of the inspection according to Mr. Twigg, the site Construction Manager), based upon the observations during the inspection it was evident that concrete wash out was either not being conducted properly, not being conducted at the proper location, or the washout area was not maintained appropriately as evidenced by concrete washout fines flowing several hundred feet to the stormwater inlet on Veneto Way. Concrete fines were noted crossing Delicato Court, along the gutter							
	A Selected, installed and maintained		CO CGP I.D.2 & I.D.7	No	7	X	\$500.00	=	\$3,500
	B Maintenance not performed prior to next anticipated storm event		CO CGP I.D.7 & I.D.8				\$250.00	=	

	(count each failure to select, install, maintain each BMP as one violation	or Veneto Way and into the inlet on Veneto Way (photos 1765 - 177 and 1774 - 1775). ESO RCA: None. Corrective actions were taken, documented and provided to the EPA on 11/1/2013. No further corrective actions are required.							
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.)	Materials (e.g., stucco) were inappropriately stored and managed. Evidence of stucco mortar mix stored and spilled into the gutter was observed (photo 1768). ESO RCA: None. Corrective actions were taken, documented and provided to the EPA on 11/1/2013. No further corrective actions are required.	CO CGP I.C.3.c.4	No	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		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 year)								
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 down slope 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									\$4,000
SMALL BUSINESS EVALUATION									
48	Is the Owner/Operator a Small Business? 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.	Elite Properties of America IV, Inc, employs over 100 persons.			No				
Total Expedited Settlement:									\$11,450
* RCA = Requires corrective action									

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 ON CWA COMPLAINT**

Action: The EPA is providing notice of a proposed expedited settlement agreement and the opportunity to comment on the proposed agreement for alleged violations of the Clean Water Act (CWA) at the Flying Horse Ranch - Turin 1 & 2 Housing Development, being constructed at the Intersection of Veneto Way and Field Brook Court in Colorado Springs, Colorado, 80919 (El Paso County).

Summary: The EPA is authorized by section 309(g) of the CWA, 33 U.S.C. § 1319(g), to issue an order assessing a civil administrative penalty for violations of certain provisions of the CWA, 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.

On November 27, 2013, the EPA commenced a civil administrative action by offering an expedited settlement offer against the Respondent identified below, alleging violations of the CWA and a permit. Pursuant to section 309(g)(4) of the CWA, the EPA hereby notifies the public of the EPA's proposed penalty assessment against:

Elite Properties of America IV, Inc.
d.b.a. Classic Homes
6385 Corporate Drive, Suite 200
Colorado Springs, CO 80919

EPA Docket Number: **CWA-08-2014-0010**

Proposed penalty: \$11,450.00

Alleged violations: (1) Failing to maintain required documents on site, (2) failing to maintain a complete storm water management plan, (3) failing to conduct or document required self-inspections, and (4) failing to install and maintain best management practices to minimize discharges of sediment and other pollutants into waters of the United States.

PUBLIC COMMENTS

Written comments on the complaint 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 will be available for public review. 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://www.epa.gov/region8/compliance/publicnotice> under Docket **CWA-08-2014-0010**

Please submit written comments to:

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

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the complaint 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. No action will be taken by the EPA to finalize a settlement in this matter until 40 days after this public notice.