



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 7, 11201 Renner Blvd, Lenexa, KS 66219

EXPEDITED SETTLEMENT AGREEMENT -6 PM 12:22

Docket Number: CWA-07-2016-0056, NPDES No.: KSR110144 & KSR110875

Waters Edge Land Company, LLC 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 \$7,600. 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 from when the Agreement is effective (i.e. 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 - CFC
P.O. Box 979009
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:

Karen A. Flournoy Date: 8-24-16
Karen A. Flournoy
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): Mark R. Simpson
Title (print): Manager
Signature: Mark R. Simpson Date: 8/15/16

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:

Karina Borromeo Date: Sept. 6, 2016
Karina Borromeo
Regional Judicial Officer

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



KS-S-MCST-0701-1

1	LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number
	Waters Edge Land Company, LLC 10800 Farley Street, Suite 265 Overland Park, KS 66210	913-681-7775	KSR110144 & KSR110875
2	LOCATION AND ADDRESS OF SITE	Inspector Name:	Pete Green
	158th Street and Mission Road Overland Park, KS 66210	Inspector Agency:	US EPA
		Entrance Interview Conducted:	Yes
		Exit Interview Conducted:	Yes
		Exit Interview given to:	Mr. Mark Simpson
		Exit Interview time:	Date: 03/24/2016

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient):	Steve Deuthmann
Name of Authorized Official (40 CFR 122.22):	Mark Simpson
Inspection Date:	03/23/2016
Start Construction Date:	04/11/2014
Estimated Completion Construction Date:	
If Unpermitted, Number of Months Unpermitted:	N/A
Name of Receiving Water Body (Indicate whether 303(d) listed):	Tributary to the Blue River
Acres Currently Disturbed Acres to be Disturbed in Whole Common Plan:	13.00 56.00
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	No

Citation Reference**	State Citation Reference***	R C A*	No. of Deficiencies	Dollar Amount	Total
3	CWA 301	KAR 28-16-153	X	\$500.00	
4	CGP 3.1.A	KSGP Part 7	X	\$5,000.00	
5	CGP 3.1.A	KSGP Part 7	X	\$75.00	
6	CGP 3.1.B	KSGP Part 7.2.9	X	\$250.00	
7	CGP 3.3.A	KSGP Part 7.1	X	\$500.00	
8	CGP 3.3.B.1	KSGP Part 7.2.1	X	\$100.00	
	CGP 3.3.B.2	KSGP Part 7.2.1	X	\$100.00	
	CGP 3.3.B.3	KSPG Part 7.2.1	X	\$100.00	
	CGP 3.3.B.4	KSPG Part 7.2.1	X	\$100.00	
	CGP 3.3.C	KSPG Part 7.2.1	X	\$500.00	
	CGP 3.3.C.1-8	KSPG Part 7.2.1	X	\$50.00	
	CGP 3.3.D	N/A			
9	CGP 3.4.A	KSGP Part 7.2.2	X	\$750.00	
	CGP 3.4.A	KSPG Part 7.2.2	X	\$250.00	
	CGP 3.4.A	N/A			

10	SWPPP does not describe interim stabilization practices		CGP 3.4.B	KSGP Parts 7.2.5 & 7.2.6			X	\$250.00	=	
11	SWPPP does not describe permanent stabilization practices		CGP 3.4.B	KSGP Parts 7.2.5 & 7.2.6			X	\$250.00	=	
12	SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	KSGP Part 7.2.2			X	\$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	KSGP Part 7.2.6			X	\$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	KSGP Part 7.2.8			X	\$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	KSGP Part 7.2.6			X	\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	KSGP Part 7.2.5			X	\$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		CGP 3.4.H	KSGP Part 7.2.9			X	\$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		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	KSGP Part 2						
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	KSGP Part 7.2.1			X	\$500.00	=	
23	Historic Properties (Reserved)									
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	KSGP Part 10.1			X	\$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)	The permittee shall indicate the changes on the erosion and sediment control plan sheets, maintain a log showing dates of all SWP2 plan modifications, a brief description of the SWP2 plan modifications, and the name and title of the person authorizing the modification.	CGP 3.11.C	KSGP Part 7.3	Yes	2	X	\$50.00	=	\$100
29	Copy of SWPPP not retained on site		CGP 3.12.A	KSGP Part 7.3			X	\$500.00	=	
	A SWPPP not made available upon request		CGP 3.12.C	KSGP Part 7.3			X	\$500.00	=	
30	SWPPP not signed/certified		CGP 3.12.D	KSGP Part 10.5			X	\$500.00	=	
INSPECTIONS										
31	Inspections not performed and documented either 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).	Plat 3 - Permit authorized 05/14/14 (22 months) or 16 months with Average rainfall events measured >0.5" from date of inspection. Plat 4 - Permit authorized 03/06/15 (11 months) or 10 Months with Average rainfalls observed >0.5" from date of inspection	CGP 3.10.A, 3.10.B	KSGP Part 7.2.10	Yes	26	X	\$250.00	=	\$6,500
	No inspections conducted and documented (if True, then leave elements 32-39 blank)				Yes	TRUE		True or False		

	Number of Inspections expected if performed every 7 days:												
	Number of Inspections expected if performed bi-weekly:												
	If known, number of days of rainfall of >0.5"												
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 precipitation not inspected		CGP 3.10.E	KSGP Part 7.2.10				X				\$50.00	=
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	KSGP Part 7.2.10				X				\$50.00	=
35	Discharge locations are not observed and inspected		CGP 3.10.E	KSGP Part 7.2.10				X				\$50.00	=
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	N/A				X				\$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 7.2.10				X				\$50.00	=
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G	KSGP Part 7.2.10				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	KSGP Parts 5 & 10.1				X				\$50.00	=
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	KSGP Part 7.2.3				X				\$500.00	=
42	Control measures are not properly:	Stormwater inlets not maintained or cleaned according to the Permit and SWPPP.											
A	Selected, installed and maintained		CGP 3.13.A	KSGP Parts 7.1 & 7.2.1		1		X				\$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)		CGP 3.6.B	KSGP Parts 7.1 & 7.2.1				X				\$250.00	=
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 3.13.B	N/A									
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.)	Uncontrolled trash and solid waste observed at Site during the inspection	CGP 3.13.C	KSGP Part 7.2.9	Yes	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		CGP 3.13.D	KSGP Part 7.2.5				X				\$500.00	=
	*Exceptions:			N/A									
	(a) Snow or frozen ground conditions			N/A									
	(b) Activities will be resumed within 14 days			N/A									
	(c) Arid or Semi-arid areas (<20 inches per			N/A									
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	KSGP Part 7.2.7				X				\$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	KSGP Part 7.2.7				X				\$1,000.00	=
B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.7				X				\$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)		CGP 3.13.E.3	KSGP Parts 7.1, 7.2.3 & 7.2.5			X	\$500.00	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	KSGP Part 7.2.7			X	\$500.00	

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.								
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Total Expedited Settlement: **\$7,600**

* Requires Corrective Action

** NPDES General Permit, 68 FR 39087, issued by EPA on February 16, 2012, https://www3.epa.gov/npdes/pubs/cgp2012_finalpermit.pdf

*** Kansas Water Pollution Control General Permit and Authorization to Discharge - Issued by KDHE on March 2, 2012 - <http://www.kdheks.gov/stormwater/download/Const%20SW%20Issued%203-2-2012%20Packet.pdf>

IN THE MATTER Of Waters Edge Land Company, LLC, Respondent
Docket No. CWA-07-2016-0056

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

breedlove.dan@epa.gov

Copy by First Class Mail to Respondent:

Mark R. Simpson, Manager
Waters Edge Land Company, LLC
10800 Farley Street, Suite 265
Overland Park, Kansas 66210

Dated: 9/6/16



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7

