

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2017 MAR -7 AM 9:16

IN THE MATTER OF)	Docket No. CWA-08-2017-0007
FROSTWOOD 6 LLC)	
and)	
DAVID JACOBSEN CONSTRUCTION)	
Respondents.)	ADMINISTRATIVE ORDER FOR COMPLIANCE
)	

FILED
EPA REGION VIII
HEARING CLERK

I. INTRODUCTION

1. This Administrative Order for Compliance (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The undersigned EPA official has been duly authorized to institute this action.

II. FINDINGS OF FACT AND LAW

2. Frostwood 6 LLC and David Jacobsen Construction (the Respondents) are corporations and are both incorporated in the State of Utah.
3. The Respondents are “person[s]” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
4. Frostwood 6 LLC owns and/or is engaged in constructing a housing development known as “Frostwood F6 Townhomes” located at 4285 North Cooper Lane in Park City, Utah (the Site).
5. David Jacobsen Construction is responsible for the operation of constructing the Site and day-to-day operations.
6. The Site encompasses approximately 4.76 acres.
7. Construction activities began at the Site on approximately January 7, 2016.
8. Frostwood 6 LLC is the “owner” of the Site as defined by 40 C.F.R. § 122.2.
9. David Jacobsen Construction is an “operator” of the Site as defined by 40 C.F.R. § 122.2.

10. The runoff and drainage from the Site is “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
11. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
12. Storm water, snow melt, surface drainage and runoff water have been leaving the Site and have flowed into the Summit County municipal separate storm sewer system (MS4) adjacent to and east and northeast of the Site. In the vicinity of the Site, the Summit County MS4 flows into relatively permanent unnamed tributaries of East Canyon Creek, which is a relatively permanent tributary to the Weber River, which is a relatively permanent tributary to the Great Salt Lake.
13. The Great Salt Lake and its tributaries referenced above are and were at all relevant times “waters of the United States” as defined by 40 C.F.R. § 122.2 and therefore “navigable waters” as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7).
14. Each storm water discharge from the Site is a “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
15. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
16. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, or other specific authorization.
18. Construction activity including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres is considered small construction activity. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres is small construction activity. 40 C.F.R. § 122.26(b)(15).
19. Any person who discharges storm water associated with small construction activity to waters of the United States is required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).
20. The Utah Department of Environmental Quality (UDEQ) was approved by EPA to administer the NPDES program on July 7, 1987. 52 Fed. Reg. 27578-27579, July 22, 1987. A permit issued by UDEQ under Utah’s EPA-approved NPDES program is known as an UPDES permit.

21. Effective July 1, 2014, the UDEQ issued an NPDES general permit (UPDES Permit No. UTRC00000, referenced as the Permit) authorizing discharges of storm water associated with construction activities including small construction activity, if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the Permit by submitting a Notice of Intent (NOI) for coverage to the UDEQ.
22. The Site was covered under the Permit from November 18, 2015 through November 18, 2016 (UPDES Permit No. UTR373147).
23. Following the expiration of Permit coverage on November 18, 2016, the Owner and Operator did not renew Permit coverage or submit a new NOI for Permit coverage. As a result, the Site has not been covered by the Permit since November 18, 2016.
24. Precipitation data collected on the National Oceanic Atmospheric Administration website for the Park City, Utah weather station indicates that on the following dates the snow depth on the ground decreased by at least 5 inches per day, which is equivalent to approximately 0.5 inches of water:
 - January 4, 2017
 - January 7, 2017
 - January 27, 2017
 - January 30, 2017
25. Since November 18, 2016, there have been at least four days with a discharge.
26. On August 31, 2016, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Permit.
27. On September 28, 2016, the EPA issued Frostwood 6 LLC, and copied David Jacobsen Construction, a *Summary of Findings and Corrective Actions and Notice of Proposed Expedited Settlement Agreement* for the August 31, 2016, inspection requesting the following items in accordance with and meeting the requirements of the Permit: a Stormwater Pollution Prevention Plan (SWPPP), a copy of the certified Notice of Intent (NOI), records of inspections conducted and corrective actions implemented at the Site, records of relevant storm water training and certification for persons inspecting of the Site and persons responsible for pollution prevention measures, and evidence of several corrective actions pertaining to storm water and sediment control Best Management Practice (BMP) implementation at the Site.
28. On October 8, 2016, David Jacobsen Construction submitted a SWPPP and a NOI to the EPA indicating that both items had been prepared prior to the EPA's August 31, 2016, inspection. The SWPPP and NOI received were not in compliance with the requirements of the Permit, as discussed in paragraph 29, below. No additional items pursuant to the EPA's document requests in paragraph 27, above, were submitted to the EPA by the Respondents.

29. On November 15, 2016, the EPA sent the Respondents a revised *Summary of Findings and Corrective Actions and Notice of Proposed Expedited Settlement* indicating that the SWPPP and the NOI submitted by David Jacobsen Construction on October 8, 2016, did not meet the requirements of the Permit. An updated SWPPP and NOI were requested, as well as the outstanding items originally requested in the EPA's September 28, 2016, inspection report. A revised Notice of Proposed Expedited Settlement was also included.
30. The Respondents did not submit to the EPA any of the documents the EPA requested or documentation of corrective actions as detailed in paragraph 29, above.

III. FINDINGS OF VIOLATION

31. The Respondents have discharged storm water without a permit on at least four separate days in 2017, failed to develop and maintain a complete SWPPP, failed to maintain records of inspections and corrective actions at the Site, failed to properly certify the NOI, failed to ensure storm water and sediment controls are properly installed and maintained at the Site, failed to ensure persons conducting inspections of the Site are properly trained and certified, and failed to ensure persons responsible for pollution prevention measures were properly trained, and therefore violated the Permit and the Act. The attached *Summary of Findings of Violation and Corrective Actions* (APPENDIX A), lists the details of these findings of violation and the associated Permit requirements.

IV. ORDER

32. Effective immediately, the Respondents shall comply with all provisions of the Permit.
33. Within 10 days of receipt of this Order, the Respondents shall submit written notice of intent to the EPA and the UDEQ of Respondent's intent to comply with the requirements of this Order. Include the certification required by paragraph 37.
34. The Respondents shall within 30 days of receipt of this Order, implement all of the Corrective Actions listed in the attached *Summary of Findings of Violation and Corrective Actions* (APPENDIX A), and provide a response to the EPA and UDEQ with the information requested in each Corrective Action. Include the certification required by paragraph 37.
35. By April 15, May 15, June 15, and July 15, 2017, provide the EPA and the UDEQ with copies of all reports documenting inspections conducted at the Site and corrective action logs for corrective actions implemented at the Site during the previous calendar month. Include the certification required by paragraph 37.

36. The Respondents shall send all written notices and reports required by this Order to the following:

EPA:

Akash Johnson
U.S. EPA Region 8 (8ENF-W-NP)
NPDES Enforcement Unit
1595 Wynkoop Street
Denver, Colorado 80202-1129

UDEQ:

Jeff Studenka, Manager
UPDES IES Section
Division of Water Quality
Utah Department of Environmental
Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

37. All reports and information required by this Order shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. § 122.22(a)(3) of a principal executive officer or ranking elected official:

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

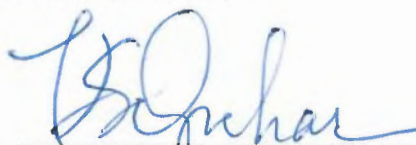
38. If the Respondents assert a business confidentiality claim for information required to be submitted under this Order, the Respondents shall provide such information only to the EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. The EPA will determine if the Respondents' designated information meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless the Respondents assert a confidentiality claim at the time the information is submitted, the information shall be provided to both the EPA and the UDEQ as specified in this Order, and the EPA may make the information available to the public without further notice to the Respondents.
39. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondents to penalties as provided under the Act.
33 U.S.C. § 1319.
40. This Order does not constitute a waiver or modification of the terms and conditions of the Permit. Nor does this Order waive any other legal responsibility or liability of the Respondents.

41. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(c), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
42. Nothing in this Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Order or to relieve the Respondents from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
43. The Respondents may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 3/7/2017

By:



Kimberly S. Opekar
Acting Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

CERTIFICATE OF SERVICE

I certify that the foregoing administrative order was sent or delivered on this day as follows:

Original and one copy hand delivered to:

Melissa Haniewicz
Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, Colorado 80202

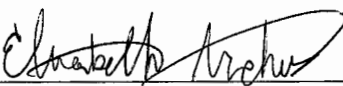
Copy by certified mail, return receipt requested (no. 7012 2210 0000 5369 0947) to:

Mr. Kent Hoggan
Frostwood 6, LLC
3799 East Catamount Ridge Way
Sandy, Utah 84092

Copy by certified mail, return receipt requested (no. 7012 2210 0000 5369 0954) to:

Mr. Kent Hoggan
5911 S Fashion Blvd, Suite 200
Salt Lake City, Utah 84107-7210

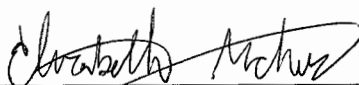
3/7/2017
Date

By: 
Elizabeth Archer

Copy by certified mail, return receipt requested (no. 7012 2210 0000 5369 0961) to:

Mr. David Jacobsen
David Jacobsen Construction
14106 North Council Fire Trail
Kamas, Utah 84036

3/7/2017
Date

By: 
Elizabeth Archer

APPENDIX A

Summary of Findings of Violation and Corrective Actions

Facility: Frostwood F6 Townhomes

Permit Number: UTR373147

**THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING
THE SITE'S STORMWATER CONSTRUCTION PERMIT COVERAGE:**

Finding 1. Pursuant to 40 C.F.R. § 122.26(b)(15), construction activity “that results in a land disturbance of equal to or greater than one acre and less than five acres” is considered a small construction activity. Pursuant to 40 C.F.R. § 122.26(c)(1), small construction activity that discharges to waters of the United States must be covered by a National Pollutant Discharge Elimination System (NPDES) Permit. Here, the Owner and Operator of the Frostwood F6 Townhomes Site (the Site; the project) submitted a Notice of Intent (NOI) to discharge under the Utah General Permit for Discharges from Construction Activities (CGP; the Permit) (UPDES Permit No. UTRC00000) and was authorized to discharge by a project-specific Permit (UPDES Permit No. UTR373147) which was active from November 18, 2015 until November 18, 2016.

Pursuant to Part 1.4. of the Permit, the Permit fee is a yearly fee and must be submitted once every year until the project is completed for a project to retain coverage under the Permit. The Utah Department of Environmental Quality (UDEQ) Division of Water Quality (DWQ) offers a 60-day grace period after the expiration of a project-specific Permit, during which the Permit fee can be submitted to renew coverage under the existing project-specific Permit. The Owner and Operator did not renew coverage under the Permit following the expiration of UPDES Permit No. UTR373147 and have not submitted a NOI for coverage of the Site under a new project-specific Permit.

Pursuant to 33 U.S.C. § 1311, except in compliance with a permit “the discharge of any pollutant by any person shall be unlawful.” Here, the Site was no longer covered by the Permit on November 18, 2016. Precipitation data collected from the National Oceanic and Atmospheric Administration website for the Park City, Utah weather station indicates that on the following dates the snow depth on the ground decreased by at least 5 inches per day:

January 4, 2017
January 7, 2017
January 27, 2017
January 30, 2017

Since November 18, 2016, there have been at least four days with a discharge. Thus, the Owner and Operator’s failure to maintain coverage under the Permit results in at least four days of discharge of stormwater without a permit in violation of 40 C.F.R. § 122.26(c)(1) and 33 U.S.C. § 1311.

APPENDIX A

Permit Requirements

Part 1.4. of the Permit (Submitting Your Notice of Intent [NOI] and Permit Fee) states: "...to be covered under this permit, you must submit to DWQ a complete and accurate NOI and the permit fee prior to commencing construction activity. The permit fee is a yearly fee. To remain covered under the permit, the permit fee must be submitted again once every year on the yearly anniversary of the submission date of the NOI... until the project is complete."

Corrective Actions

In accordance with 40 C.F.R. § 122.26(c), 33 U.S.C. § 1311, and Part 1.4. of the Permit, the Owner and Operator must file a NOI with UDEQ and pay all corresponding fees to apply for or renew authorization to discharge under the Utah CGP. As the 60-day grace period for renewal of expired permit UTR 373147 has passed, discharge may be authorized under a new project-specific Permit number. In a response to the Environmental Protection Agency (EPA) and UDEQ, provide a copy of the new NOI.

THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING THE NOTICE OF INTENT (NOI):

Finding 2. Pursuant to Part 1.1. of the Permit, both the Owner and Operator involved with construction activity on a project are required to sign the NOI. Here, the NOI for the project was not signed by a representative of the Owner, Kent Hoggan of Frostwood 6 LLC, or the Operator, David Jacobsen of David Jacobsen Construction. Additionally, the Operator listed on the NOI was CBM Leasing, a subcontractor, not the primary Operator. Thus, failure of the Owner and Operator to properly complete and sign the NOI is a violation of Part 1.1.1. of the Permit.

Permit Requirements

Part 1.1. of the Permit (Eligibility Conditions Required of All Projects) states: "Only those parties and projects that meet all of the following eligibility conditions may be covered under this permit:

- 1.1.1. Parties that must sign the NOI are the parties shown below that are involved with construction activity on a construction project.
 - a. Owner: The party that owns/leases the land on which the construction activities occur and has ultimate control over the project and destiny of a project. The owner has control over construction plans and specifications, including the ability to make modifications at the highest level, to those plans and specifications.
 - b. Operator: The party (usually the general contractor) that has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit)."

Corrective Actions

In accordance with Part 1.1. of the Permit, ensure the Owner and Operator correctly complete and certify the new NOI submitted in accordance with the Corrective Action pursuant to Finding 1. In a response to EPA and UDEQ, provide a copy of the certified NOI.

**THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING
THE STORMWATER POLLUTION PREVENTION PLAN (SWPPP)
AND SWPPP MAPS:**

Finding 3. Pursuant to Part 7.2.6. of the Permit, the Stormwater Pollution Prevention Plan (SWPPP) must contain a list of pollution-generating activities and for each activity a description of which pollutants are generated. Here, the SWPPP prepared for the Site does not contain a description of all the pollutant-generating activities at the Site or an inventory of associated pollutants or pollutant constituents. During the EPA's August 31, 2016, inspection, at least two pollutant-generating activities, porta-johns and concrete washout, evidenced by uncontained concrete washout, were observed to be exposed to precipitation or could potentially discharge from the Site. However, these features were not identified as pollutant-generating activities in the narrative portion of the SWPPP. Thus, the failure to identify porta-johns and uncontained concrete washout is a failure to list all pollutant-generating activities in the SWPPP is a violation of Part 7.2.6. of the Permit.

Permit Requirements

Part 7.2.6 of the Permit (Construction Site Pollutants) states: "The SWPPP must include the following:

- a) A list and description of all the pollutant-generating activities on your site.
- b) For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall, or snowmelt, and could be discharged from your construction site. You must take into account where potential spills and leaks could occur that contribute pollutants to storm water discharges. You must also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in Part 2.3.5.a."

Corrective Actions

In accordance with Part 7.2.6. of the Permit, update the SWPPP to include a description of all pollutant-generating activities at the Site and an inventory of associated pollutants or pollutant constituents, including the two features identified in the subject finding. In a response to EPA and UDEQ, provide a copy of relevant updated portions of the SWPPP.

Finding 4. Pursuant to Part 7.2.5.b of the Permit, locations of surface waters in the vicinity of the Site must be included on the SWPPP map(s). Here, the SWPPP does not contain a Site map indicating the locations of all surface waters within or in the immediate vicinity of the Site. During the inspection on August 31, 2016, EPA inspectors observed a stream to the east of the Site, across Cooper Lane, but the stream is not detailed on any of the SWPPP maps. Thus, the failure to include "locations of all surface waters within the vicinity of the site" is a violation of Part 7.2.5. of the Permit.

APPENDIX A

Permit Requirements

Part 7.2.5. of the Permit (Site Map) states: “The SWPPP must include a legible site map, or series of maps, showing the following features of your project...

- b) Locations of all surface waters, including wetlands, that exist within or in the immediate vicinity of the site. Indicate which water bodies are listed as impaired, and which are identified as Category 1 or 2 waters...”

Corrective Actions

In accordance with Part 7.2.5. of the Permit, update the SWPPP map(s) to indicate locations of all surface waters and wetlands that exist within or in the immediate vicinity of the Site, including the creek identified in the subject finding. Indicate which water bodies are listed as impaired. In a response to EPA and UDEQ, provide a copy of the relevant updated SWPPP map(s).

Finding 5. Pursuant to Part 7.2.9.a. of the Permit, the SWPPP must contain a description of all stormwater control measures utilized at the Site. Here, during the August 31, 2016 inspection, EPA inspectors observed that straw wattles were installed as perimeter controls along the eastern, downgradient property boundary. However, these straw wattles were not identified and described as stormwater control measures in the SWPPP. Thus, the failure to describe straw wattles as a stormwater control measure in the SWPPP is a violation of Part 7.2.9.a. of the Permit.

Permit Requirements

Part 7.2.9.a of the Permit (Storm Water Control Measures to be Used During Construction Activity) states: “The SWPPP must describe all storm water control measures that are or will be installed and maintained at your site to meet the requirements of Part 2. For each storm water control measure, you must document:

- i) Information on the type of storm water control measure to be installed and maintained, including design information;
- ii) What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of your site to meet the requirement of Part 2.1.2.b.i.;
- iii) For exit points on your site, document stabilization techniques you will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with Part 2.1.2.c...”

Corrective Actions

In accordance with Part 7.2.9.a. of the Permit, update the SWPPP to describe all stormwater control measures that are or will be installed and maintained at the Site, including the straw wattles discussed in the subject finding. In a response to EPA and UDEQ, provide a copy of relevant updated portions of the SWPPP.

Finding 6. Pursuant to Part 7.2.12. of the Permit, the SWPPP must document how required personnel on Site were trained in accordance with Part 6 of the Permit. Here, the SWPPP does not include any documentation indicating how required personnel were trained. Thus, the failure to include a description of required personnel training is a failure of Part 7.2.12. of the Permit.

Permit Requirements

Part 7.2.12. of the Permit (Staff Training) states: “The SWPPP must include documentation that the required personnel were trained in accordance with Part 6, and all other relevant training be documented...”

Part 6 of the Permit (Staff Training Requirements) states, “Prior to the commencement of earth-disturbing activities or pollutant generating activities, whichever occurs first, you must ensure and document that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- Personnel responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention measures);
- Personnel responsible for the application and storage of treatment chemicals (if applicable);
- Personnel who are responsible for conducting inspections as required in Part 4.1.1; and
- Personnel who are responsible for taking corrective actions as required in Part 5...”

Corrective Actions

In accordance with Part 7.2.12. of the Permit, include relevant training documentation in the SWPPP indicating that required personnel were trained in accordance with Part 6. In a response to EPA and UDEQ, provide a copy of relevant training documentation.

Finding 7. Pursuant to Part 7.4. of the Permit, the SWPPP and relevant SWPPP map(s) must be modified to reflect changes relating to a number of conditions, including changes to construction plans, stormwater control measures, pollution prevention measures, or other activities at the Site that are no longer accurately reflected in the SWPPP, including corrective actions triggered under Part 5. These SWPPP revisions must be completed within 7 calendar days following the occurrence of any such changes. Here, during the August 31, 2016 inspection, the Operator representative, Mr. Jacobsen, indicated there were at least two stormwater and sediment controls departing from the SWPPP which had been implemented in response to complaints from the community of sediment deposition onto Cooper Lane during spring snowmelt. These stormwater and sediment controls included the following: (1) straw wattles installed along portions of the eastern, downgradient Site boundary fronting Cooper Lane; and (2) additional silt fence and straw bales in the northeastern corner of the Site. The SWPPP received on October 8, 2016, had not been updated to reflect any of these modifications. Thus, failure to modify the SWPPP to reflect changes to stormwater control measures within 7 days of completing those changes is a violation of Part 7.4. of the Permit.

APPENDIX A

Permit Requirements

Part 7.4. of the Permit (Required SWPPP Modifications) states:

“7.4.1. List of Conditions Requiring SWPPP Modification. You must modify your SWPPP, including the site map(s), in response to any of the following conditions:

- a. Whenever you make changes to your construction plans, storm water control measures, pollution prevention measures, or other activities at your site that are no longer accurately reflected in your SWPPP. This includes changes made in response to corrective actions triggered under Part 5...

7.4.2. Deadlines for SWPPP Modifications. You must complete required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in Part 7.4.1.

7.4.3. SWPPP Modification Records. You are required to maintain records showing the dates of all SWPPP modifications. The records must include the name of the person authorizing each change (see Part 7.2.15 above - this person can be a duly authorized representative as allowed in Appendix G.16.1.2, but should be a member of the storm water team) and a brief summary of all changes.

7.4.4. Certification Requirements. All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix G, Part G.16.1.2.”

Corrective Actions

In accordance with Part 7.4. of the Permit, modify the SWPPP, including the SWPPP map(s), in response to changes in construction plans, stormwater control measures, pollution prevention measures, or other activities at the Site that are no longer accurately reflected in the SWPPP, including changes made in response to corrective actions triggered under Part 5 and the changes discussed in the subject finding. In a response to EPA and UDEQ, provide a copy of relevant updated portions of the SWPPP, including any updated SWPPP map(s).

Finding 8. Pursuant to Part 7.3. of the Permit, the SWPPP must be located at the Site or made readily available within 30 minutes of a request by DWQ, Municipal Separate Storm Sewer System (MS4), or EPA inspectors. Part 7.3 also requires that requests for a copy of the SWPPP made by a regulatory authority (DWQ, MS4, or EPA) be accommodated within 72 hours. Here, during the August 31, 2016, inspection, EPA inspectors requested to review the SWPPP. The Operator representative, Mr. Jacobsen, indicated that the SWPPP was not maintained onsite, but at his residence, located within 30 minutes from the Site. Mr. Jacobsen indicated that he would transmit an electronic copy of the SWPPP to the EPA inspectors. However, no SWPPP was transmitted to the EPA inspectors. The EPA inspectors again requested a copy of the SWPPP during a follow-up phone call with Mr. Jacobsen in mid-September 2016. However, the SWPPP was not provided until October 8, 2016, after receipt of the EPA's September 28, 2016, inspection report. The SWPPP was neither made available within 30 minutes at the request of EPA while on-Site nor within 72 hours when the request was made for a copy.

Thus, failure to provide a copy of the SWPPP during the inspection and upon request of the EPA constitutes a violation of Part 7.3. of the Permit.

Permit Requirements

Part 7.3. of the Permit (On-Site Availability of Your SWPPP) states: “You are required to maintain a current copy of the project SWPPP at every active construction site where this permit is required, and where construction workers and construction activity related to the project is occurring. The SW [Stormwater] Team and/or site workers must be able to refer to [the] SWPPP and update it as needed to manage the site according to permit requirements and as outlined in the SWPPP (it is not required that the SWPPP be on the site when construction workers leave for the day or when there is no activity occurring on the site, but at all times there must be posted contact information where the SWPPP can be obtained – see paragraph 1.5). The SWPPP must be available within 30 minutes at the request of DWQ, MS4, or EPA inspectors during random inspections at active sites, or immediately for pre-scheduled inspections. Requests for a copy of the SWPPP by a regulatory authority (DWQ, EPA, or an MS4), must be accommodated within 72 hours, or as agreed upon by the permittee and the regulatory authority at the time...”

Corrective Actions

In accordance with Part 7.3. of the Permit, ensure the SWPPP is available to the SW Team and/or site workers for reference and update, as needed. Also, ensure the SWPPP is made readily available within 30 minutes of a request by DWQ, MS4, or EPA inspectors or that a request for a copy of the SWPPP is accommodated within 72 hours. In a response to EPA and UDEQ, indicate how these corrective actions will be implemented.

Finding 9. Pursuant to Part 7.2.9.a.iv. of the Permit, for projects at high altitudes that expect long seasons of snow, the SWPPP must document when the snow season is expected so spring runoff controls can be installed before snowfall. Here, the Site is located at high altitude in the vicinity of a ski resort and, in the spring of 2016, had heavy sediment runoff during the snow melt. The SWPPP does not document when the snow season is expected. Thus, as the Site is at high altitude and subject to snow conditions, failure to document when the snow season is expected in the SWPPP is a violation of Part 7.2.9.a.iv. of the Permit.

Permit Requirements

Part 7.2.9.a. of the Permit (Storm Water Control Measures to be Used During Construction Activity) states: “The SWPPP must describe all storm water control measures that are or will be installed and maintained at your site to meet the requirements of Part 2. For each storm water control measure, you must document...”

- iv) For projects at high altitudes that expect long seasons of snow, you must document in your SWPPP when the snow season is expected so spring runoff controls can be installed before snowfall; . . .”

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Corrective Actions

In accordance with Part 7.2.9.a.iv. of the Permit, update the SWPPP to document when the snow season is expected. In a response to EPA and UDEQ, provide a copy of relevant updated portions of the SWPPP.

THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING INSPECTIONS AND CORRECTIVE ACTIONS:

Finding 10. Pursuant to Part 4.1.7.a. of the Permit, inspection reports are to be completed within 24 hours of an inspection of the Site and records of those reports are to be maintained at the Site or at an easily accessible location. Here, during the August 31, 2016, inspection, the Operator representative, Mr. Jacobsen, stated to EPA inspectors that inspections of the Site were conducted daily; however, these inspections were not documented. Thus, failure to complete an inspection report within 24 hours of each inspection and maintain those records is a violation of Part 4.1.7.a. of the Permit.

Permit Requirements

Part 4. of the Permit (Inspections) indicates requirements for conducting and documenting self-inspections.

Part 4.1.7.a. of the Permit (Inspection Report) states: "You must complete an inspection report within 24 hours of completing any site inspection. Each inspection report must include the following:

- i. The inspection date;
- ii. The UPDES CGP permit tracking number;
- iii. Names and titles (or position) of personnel making the inspection;
- iv. A summary of your inspection findings covering at a minimum the observations you made in accordance with Part 4.1.6;
- v. If you are inspecting your site at the frequency specified in Part 4.1.2.b., Part 4.1.3., or Part 4.1.4.c., and you conducted an inspection because of rainfall measuring 0.5 inches or greater, you must include the applicable rain gauge or weather station readings that triggered the inspection; and
- vi. If you have determined that it is unsafe to inspect a portion of your site, you must describe the reason you found it to be unsafe and specify the locations that this condition applied to."

Part 4.1.7.b. of the Permit (Signature Requirements) states: "[e]ach inspection report must be signed in accordance with Appendix G, Part G.16 of this Permit."

Part 4.1.7.c. of the Permit (Recordkeeping Requirements) states: "[y]ou are required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by the DWQ. For purposes of this permit, your inspection reports may be kept electronically if the records are:

- i. In a format that can be read in a similar manner as a paper record;
- ii. Legally defensible with no less evidentiary value than a paper equivalent;

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- iii. Accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.”

Corrective Actions

Document all inspections in accordance with Part 4.1.7. of the Permit. In a response to EPA and UDEQ, provide a summary of how inspection reports will be completed within 24 hours of all inspections in the future and indicate how those records will be maintained, and provide copies of any inspection reports created since the EPA’s August 31, 2016 inspection.

Finding 11. Pursuant to Part 4.1.6.g. of the Permit, if, following an inspection, corrective action is necessary, then it must be carried out in accordance with Part 5. of the Permit. Here, according statements by the Operator representative on August 31, 2016, corrective actions were conducted following inspections of the Site. However, the Operator failed to track corrective actions as required under Part 5.4 of the Permit, because no record or log was produced documenting the corrective actions.

Permit Requirements

Part 4.1.6.g. of the Permit (Requirements of Inspections) states: “Based on the results of your inspection, initiate corrective action under Part 5.”

Part 5.4. of the Permit (Tracking of Corrective Action) states: “For each corrective action taken in accordance with this Part, you must make an entry in a corrective action report/log, inspection reports, or other method the permittee has devised to track corrective action, which includes the applicable information in Parts 5.1.1 and 5.4.2.”

Part 5.4.1. of the Permit states: “Within a day or so of discovering the occurrence of a storm water or pollution control problem at your site, you must make an entry in a report/log or other devi[c]e for monitoring corrective action of the following:

- a. What condition was identified at your site that required corrective action (BMPs were not installed, installed incorrectly, were not effective, or need repairing);
- b. The date and time the condition was identified and how it was identified (inspection report, happened to notice it needed maintenance, etc.).”

Part 5.4.2. of the Permit states: “Within 7 calendar days of discovering the occurrence of a problem with a storm water or pollution control measure at your site, you must make an entry in a corrective action report/log (or other corrective action monitoring devise) of the following:

- a. Any follow-up actions taken to repair the problem, including the dates such actions occurred;
- b. Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.”

Part 5.4.3. of the Permit (Recordkeeping Requirements) states: “You are required to keep a current copy of all corrective action entries at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by DWQ or the

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local jurisdictional MS4. For purposes of this permit, your corrective action entries may be kept electronically if the records are:

- a. In a format that can be read in a similar manner as a paper record;
- b. Legally defensible with no less evidentiary value than a paper equivalent; and
- c. Accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

All corrective action entries completed for this Part must be retained for at least 3 years from the date that your permit coverage expires or is terminated.”

Corrective Actions

In a response to EPA and UDEQ, provide a summary of how corrective actions will be tracked in accordance with Part 5. of the Permit. Following completion of the corrective actions detailed in this *Appendix A*, provide EPA and UDEQ with a record of the tracking report/log of corrective actions for any corrective actions documented since the EPA’s August 31, 2016 inspection.

THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING STORMWATER AND SEDIMENT CONTROLS:

Finding 12. Pursuant to Part 2.1. of the Permit, the Owner or Operator is required to design, install and maintain erosion and sediment controls in order to minimize the discharge of pollutants during construction. Here, during the August 31, 2016, EPA inspection, the following violations of the Part 2. requirements were identified:

- a. Pursuant to Part 2.1.1.c.i. of the Permit, stormwater controls, including perimeter controls, must be installed before commencing each phase of earth-disturbance. Pursuant to Part 2.1.2.b.i. of the Permit, sediment controls must be installed along those perimeter areas of the site that will receive stormwater from areas where earth disturbing activities are occurring. Silt fence was installed along portions of the eastern, downgradient Site boundary fronting Cooper Lane; however, the owner or Operator failed to install silt fence or other perimeter controls in some perimeter areas downgradient of disturbed areas.
- b. Pursuant to Part 2.1.1.d.i. and Part 2.3.2. of the Permit, all erosion and sediment controls must remain in effective operating condition during permit coverage and be protected from activities that would reduce their effectiveness. Pursuant to Part 2.3.2. of the Permit, if controls are found to be in need of replacement, repair, or maintenance, the necessary repairs or modifications must be made and work to fix the problem should be initiated immediately after discovery of the problem. The Owner or Operator failed to repair and maintain portions of the existing silt fence, as it had detached from supporting stakes in several locations.
- c. Part 2.1.1.d.i. and Part 2.3.2. of the Permit require that all erosion and sediment controls remain in effective operating condition during permit coverage and be protected from activities that would reduce their effectiveness. Part 2.3.2. also requires that, if controls are found to be in need of replacement, repair, or maintenance, work to fix the problem should be initiated immediately after discovery and the necessary repairs or modifications must be made. The Owner or Operator failed to maintain the straw wattles installed along portions of the

eastern, downgradient Site boundary fronting Cooper Lane as the straw wattles were flattened.

- d. Part 2.1.1.c.ii. of the Permit requires that all stormwater controls be installed in accordance with good engineering and construction practices and manufacturer's specifications. In a disturbed area along the northern property boundary, the Owner or Operator failed to properly install wattles of unknown composition as the wattles were not arranged around the downgradient perimeter of the disturbed area.

Thus, failure to design, maintain and repair erosion and sediment controls is a violation of requirements of Part 2. of the Permit.

Permit Requirements

Part 2.1. of the Permit (Erosion and Sediment Control Requirements) states: "Erosion and sediment controls must be designed, installed, and maintained in order to minimize the discharge of pollutants from earth-disturbing activities."

Part 2.1.1.c.i. of the Permit (Installation Requirements) states: "Unless infeasible, storm water controls must be installed before commencing each phase of earth-disturbance (e.g. buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading and excavating."

Part 2.1.1.c.ii. of the Permit (Installation Requirements) states: "All storm water controls must be installed in accordance with good engineering and construction practices and manufacturer's specifications including applicable design specifications."

Part 2.1.1.d.i. of the Permit (Maintenance Requirements) states: "All erosion and sediment controls required in this Part must remain in effective operating condition during permit coverage and be protected from activities that would reduce their effectiveness."

Part 2.1.2.b.i. of the Permit (Perimeter Controls: Installation Requirements) states: "You must install sediment controls along those perimeter areas of your site that will receive storm water from areas where earth disturbing activities are occurring."

Part 2.3.2. of the Permit (General Maintenance Requirements) states: "You must ensure that all pollution prevention controls installed in accordance with this Part remain in effective operating condition and are protected from activities that would reduce their effectiveness... If you find that controls need to be replaced, repaired or maintained, you must make the necessary repairs or modifications in accordance with the following:

- i. Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.
- ii. When installation of a new pollution prevention control or a significant repair is needed, you must install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery, or as directed by the DWQ, MS4 or EPA oversight inspector..."

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Corrective Actions

In accordance with the requirements of Part 2. of the Permit, design, install, and maintain erosion and sediment controls in order to minimize the discharge of pollutants during earth disturbing activities. Implement corrective actions to address each of the violations identified above. In a response to EPA and UDEQ, indicate how the Operator implemented these corrective actions and provide photographs.

Finding 13. Pursuant to Part 2.1.1.c.i. of the Permit, stormwater controls, including perimeter controls, must be installed before commencing each phase of earth-disturbance. Pursuant to Part 2.1.2.b.i. of the Permit, sediment controls must be installed along those perimeter areas of the Site that will receive stormwater from areas where earth disturbing activities are occurring. Here, during the August 31, 2016, inspection the Operator stated that some of the stormwater and sediment controls installed in the southeastern downgradient corner of the Site had originally been implemented in response to complaints from the community of sediment deposition onto Cooper Lane during spring 2016 snowmelt. Thus, the Owner or Operator failed to install stormwater and sediment perimeter controls in the southeastern downgradient corner of the Site, where stormwater was received from areas where earth disturbing activities were occurring, prior to the applicable phase of earth disturbance.

Permit Requirements

Part 2.1.1.c.i of the Permit (Installation Requirements) states: “Unless infeasible, storm water controls must be installed before commencing each phase of earth-disturbance (e.g. buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading and excavating.”

Part 2.1.2.b.i. of the Permit (Perimeter Controls: Installation Requirements) states: “You must install sediment controls along those perimeter areas of your site that will receive storm water from areas where earth disturbing activities are occurring.”

Corrective Action

In accordance with Part 2.1.1.c.i. of the Permit, install all required stormwater controls prior to commencing earth disturbing activities that control discharges from the initial Site clearing, grading, and excavating. In accordance with Part 2.1.2.b.i. of the Permit, install all required sediment controls along perimeter areas of the Site which will receive stormwater from areas where earth disturbing activities are occurring. In a response to EPA and UDEQ, provide a summary of how the Operator will identify and install all required stormwater and sediment controls before commencing each phase of earth-disturbance and along all perimeter areas.

Finding 14. Pursuant to Part 2.3.3.d. of the Permit, all washout of concrete, paint, or other materials must be disposed of in a leak-proof container. Here, during the August 31, 2016 inspection, uncontained concrete washout was observed in the south-southeast area of the Site. Therefore, the Owner or Operator failed to provide effective means to direct washout to the requisite container.

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Permit Requirements

Part 2.3.3.d. of the Permit (Washing of Applicators and Containers used for Paint, Concrete, or Other Materials) states: "To comply with the prohibition in Parts 2.3.1.a and 2.3.1.b, you must provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other materials. To comply with this requirement, you must:

- i. Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation; you must segregate paint waste and oily waste from stucco/concrete washout waste and manage the proper disposal separately..."

Corrective Actions

In accordance with Part 2.3.3.d. of the Permit, provide an effective means of eliminating the discharge of water from the washout and cleanout of concrete, direct all washwater into a leak-proof container or pit, and ensure that all concrete washout is otherwise handled in accordance with the requirements of Part 2.3.3.d. of the Permit. In a response to EPA and UDEQ, indicate how and when the Operator implemented this corrective action and provide photographs.

Finding 15. Pursuant to Part 2.2. of the Permit, soil stabilization measures must be implemented within 14 days of when the earth-disturbing activities have permanently or temporarily ceased. Here, during the August 31, 2016, inspection, EPA inspectors observed that a disturbed area along the northern property extents was approximately 70% unstabilized. The Operator stated during the inspection that the area was at final grade, had remained unstabilized for approximately 14 days, and that no additional stabilization was planned for approximately 50 days following the inspection. Therefore, the Owner or Operator failed to implement required soil stabilization measures in accordance with Part 2.2. of the Permit.

Permit Requirements

Part 2.2.1.a. of the Permit (Deadline to Initiate Stabilization) states: "You must initiate soil stabilization measures within 14 days of whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the site..."

Part 2.2.1.b. of the Permit (Deadline to Complete Stabilization Activities) states: "Within 14 calendar days after the initiation of soil stabilization activities consistent with Part 2.2.1.a, you are required to have completed:

- i. For vegetative stabilization, all activities necessary to initially seed or plant the area to be stabilized; and/or
- ii. For non-vegetative stabilization, the installation or application of all such non-vegetative measures."

Corrective Actions

In accordance with Part 2.2.1.a. of the Permit, initiate soil stabilization measures within 14 days of whenever earth-disturbing activities have permanently or temporarily ceased on any portion of the Site. Initiate soil stabilization measures in the area discussed in the subject

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violation and any other applicable areas. In a response to EPA and UDEQ, indicate where, how, and when the Operator implemented this corrective action and provide photographs.

THE FOLLOWING FINDINGS WERE IDENTIFIED REGARDING TRAINING REQUIREMENTS:

Finding 16. Pursuant to Part 4.1.1., Part 6., and Part 7.2.12. of the Permit, the person(s) conducting inspections of the Site must be a “qualified person” and be currently certified. Documentation of such relevant training must also be included in the SWPPP. Here, during the August 31, 2016, inspection, the Operator representative, Mr. Jacobsen, identified himself as the person responsible for conducting inspections. Mr. Jacobsen indicated that he did not have certification of formal stormwater training and there was no documentation of such training in the SWPPP. Thus, the Owner or Operator failed to ensure a “qualified” and certified person was conducting the Site inspections and document such relevant training in the SWPPP, in violation of Part 4.1.1., Part 6, and Part 7.2.12. of the Permit.

Permit Requirements

Part 4.1.1. of the Permit (Person[s] Responsible for Inspecting the Site) states: “You are responsible for ensuring that the person who conducts inspections is a ‘qualified person’ and currently certified.”

Note [to Part 4.1.1.]: “A “qualified person” is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possess the skills to assess conditions at the construction site that could impact storm water quality, and the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit, such as but not limited to the following:

- Utah Registered Storm Water Inspector (RSI)
- Certified Professional in Erosion and Sediment Control (CPESC)
- Certified Professional in Storm Water Quality (CPSWQ)
- Certified Erosion, Sediment, and Storm Water Inspector (CESSWI)
- Certified Inspector of Sediment and Erosion Control (CISEC)
- National Institute for Certification in Engineering Technologies, Erosion and Sediment Control, Level 3 (NICET)
- Utah Department of Transportation Erosion Control Supervisor (ECS)”

Part 6 of the Permit (Staff Training Requirements) states: “Prior to the commencement of earth-disturbing activities or pollutant generating activities, whichever occurs first, you must ensure and document that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- Personnel responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention measures);
- Personnel responsible for the application and storage of treatment chemicals (if applicable);
- Personnel who are responsible for conducting inspections as required in Part 4.1.1; and
- Personnel who are responsible for taking corrective actions as required in Part 5.”

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Part 7.2.12. of the Permit (Staff Training) states: “The SWPPP must include documentation that the required personnel were trained in accordance with Part 6, and all other relevant training be documented.”

Corrective Actions

In accordance with Part 4.1.1. of the Permit, ensure the person(s) responsible for inspecting the Site is a “qualified person” and is currently certified. In accordance with Part 7.2.12. of the Permit, include documentation of relevant training in the SWPPP. In a response to EPA and UDEQ, indicate who will be conducting future inspections of the Site and provide documentation that said person(s) is a “qualified person” and is currently certified.

Finding 17. Pursuant to Part 6. of the Permit, prior to the commencement of earth-disturbing or pollutant-generating activities, personnel with responsibilities relevant to stormwater controls, including pollution prevention measures, must be trained to understand the requirements of the Permit and their specific responsibilities with respect to those requirements. Pursuant to Part 2.3.3.d. of the Permit, all washout of concrete, paint, or other materials must be disposed of in a leak-proof container. Here, during the August 31, 2016, inspection, EPA inspectors observed uncontained concrete washout in the south-southeast area of the Site. Therefore, the Owner or Operator failed to ensure subcontractors/responsible personnel understood and performed in accordance the requirement of the Permit with respect to the proper disposal of concrete washout, in violation of Part 6 of the Permit.

Permit Requirements

Part 2.3.3.d. of the Permit (Washing of Applicators and Containers used for Paint, Concrete, or Other Materials) states: “To comply with the prohibition in Parts 2.3.1.a and 2.3.1.b, you must provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other materials. To comply with this requirement, you must:

- i. Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation; you must segregate paint waste and oily waste from stucco/concrete washout waste and manage the proper disposal separately...”

Part 6 of the Permit (Staff Training Requirements) states: “Prior to the commencement of earth-disturbing activities or pollutant generating activities, whichever occurs first, you must ensure and document that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:

- Personnel responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention measures);
- Personnel responsible for the application and storage of treatment chemicals (if applicable);
- Personnel who are responsible for conducting inspections as required in Part 4.1.1; and
- Personnel who are responsible for taking corrective actions as required in Part 5...

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You are responsible for ensuring that all activities on the site comply with the requirements of this permit. Although you are not required to provide or document formal training for subcontractors or other outside service providers, you must ensure (through a contract if necessary) that such personnel understand and perform by any requirements of the permit and the SWPPP that may be affected by the work they are subcontracted to perform...

At a minimum, personnel must be trained to understand the following if related to the scope of their job duties...

- The location of all storm water controls on the site required by the permit, and how they are to be maintained;
- The proper procedures to follow with respect to the permit's pollution prevention requirements; and
- When and how to conduct inspections, record applicable findings, and take corrective actions.”

Corrective Actions

In accordance with Part 6. of the Permit, ensure that relevant personnel understand the requirements of the Permit and their specific responsibilities with respect to those requirements, including the management of concrete washout as required by Part 2.3.3.d. In a response to EPA and UDEQ, indicate how the Operator implemented this corrective action.