



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
 Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101  
**FINDINGS OF VIOLATIONS and ORDER FOR COMPLIANCE**

Docket Number: CWA-07-2005-0010  
 Permit No.: NER-101197

OCT 20 PM 3:32  
 ENVIRONMENTAL PROTECTION  
 AGENCY-REGION VII  
 REGIONAL HEARING CLERK

STATUTORY AUTHORITY

The following FINDINGS are made, and ORDER issued, under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA), by Sections 308(a) and 309(a) of the Clean Water Act (herein the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a). The Administrator of EPA has delegated the authority to issue this Order to the Regional Administrator of EPA Region 7, who has further delegated this authority to the Director of the Water, Wetlands, and Pesticides Division.

and 40 C.F.R. § 122.26:

Category (x) Construction

Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five [5] acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a large common plan of development or sale if the large common plan will ultimately disturb five acres or more.

FINDINGS

1. Horgan Development Company (herein the "Respondent") is a "person," within the meaning of § 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. Attached is an "Expedited Settlement Offer Worksheet" (herein the "Form"), which is hereby incorporated by reference. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

3. At all times relevant to this Order, Respondent owned or operated the facility described in the Form (herein "the facility"), and for which was legally organized as described on the Form.

4. At all times relevant to this Order, the facility was a "point source" of a "discharge" of "pollutant[s]" in and with its storm water discharges to the receiving waters of "waters of the United States" within the meaning of § 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. As a result, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under § 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States except with the authorization of, and in compliance with, a NPDES permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402 of the Act, 33 U.S.C. § 1342. The Nebraska Department of Environmental Quality, (NDEQ) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to § 402 of the Act. EPA maintains concurrent authority with delegated states for violations of the Act.

7. Under 40 C.F.R. § 122.26(b)(14), the following category of facilities is among those considered to be engaging in storm water "industrial activity" for purposes of § 402(p) of the Act

8. Pursuant to Section 402(p) of the Act, NDEQ issued a General Permit for the discharge of storm water under the NPDES Permit No. NER100000 (the General Permit). The General Permit became effective on August 1, 1997 and was administratively extended on August 1, 2002.

9. Respondent applied for and was issued a permit for coverage under the General Permit described above. NDEQ issued permit NER-101197 on February 26, 2002, which expired on February 26, 2007.

10. At all times relevant to this action, the facility involved in construction activities including clearing, grading, excavation. The approximate number of acres for the common plan is documented on the Form.

11. The facility was conducting construction activities described in the Form, which continued throughout the time period relevant to this action.

12. Each person that meets the definition of "owner/operator", and engages in construction subject to the NPDES program and defined by 40 CFR § 122.26(b)(14)(x) or 40 CFR § 122.26(b)(15), must apply for and obtain an individual permit before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

13. At all times relevant to this action, Respondent was "owner" or "operator" within the meaning of 40 C.F.R. § 122.26 of the permit, and was therefore required to obtain NPDES permit coverage for its construction activities at the facility.

14. The facility was inspected as documented on the Form. As a result of this inspection, the facility was found to be in violation of its NPDES permit.

15. If so documented in the Form, each violation of the conditions of the permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

**ORDER**

Based on these Findings and pursuant to the authority of §§ 308(a) and 309(a) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a), EPA HEREBY ORDERS Respondent to take the following action:

A. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above and in the Form, and to come into compliance with all of the applicable requirements of the permit.

B. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

C. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations within the shortest possible time. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

D. Any information or correspondence submitted by Respondent to EPA under this Order shall be addressed to the following:

Ms. Diana Jackson  
Water Enforcement Branch  
EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

**GENERAL PROVISIONS**

Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines, or any other relief appropriate under the Act for the violations cited herein, or other violations that become known. EPA reserves the right to seek any remedy available under the law that it deems appropriate.

Failure to comply with this Order or the Act can result in further administrative action, or a civil judicial action initiated by the U.S. Department of Justice. If the United States initiates a civil judicial action, Respondent will be subject to civil penalties of up to \$32,500 per day per violation.

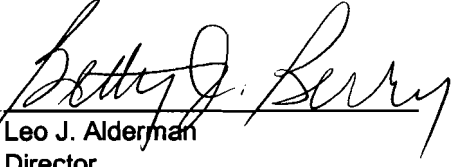
If a criminal action is initiated by U.S. Department of Justice, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, Respondent may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

This Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES permit, which

remains in full force and effect. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

The effective date of this Order is the date it is received by Respondent.

10/14/04  
Date

  
Leo J. Alderman  
Director  
Water, Wetlands, and Pesticides Division

# Expedited Settlement Offer Worksheet Findings and Alleged Violations

*Consult Instructions regarding eligibility criteria  
and procedures prior to use*  
Version: NER100000



**1 Legal Name and Mailing Address of Operator**

Robert Horgan  
Horgan Development Company  
13215 Birch Street, Suite 103  
Omaha, NE 68164

**Telephone Number**

402-498-8800

**NPDES Permit Number**

NER-101197

**2 Location and Address of Site**

Pine Creek  
SW Corner 156th Street & W State Road  
Omaha, NE

**Name of Site Contact (ESO Worksheet recipient):**  
**Name of Authorized Official (40 CFR 122.22)**  
**Inspection Date:**  
**Start Construction Date:**  
**Estimated Completion Construction Date:**  
**If Unpermitted, Number of Months Unpermitted:**  
**Name of Receiving Water Body (Indicate whether 303(d) listed):**  
**Acres Disturbed (whole common plan):**  
**Is Site Eligible for Rainfall Erosivity or TMDL Waiver per 40 CFR 122.26(b)(15)?**

Nancy Pridal
Robert Horgan
5/11/2004
Spring 2002
Unnamed tributary of Standing Bear Lake
160

	Nebraska Citation Reference*	National Permit Citation Reference**	No. of Violations	Violation Amount	Settlement Offer
3 Operator(s) in control of site specifications unpermitted for _____ months (# of months = # of violations)	CNR 119-2	CWA 301	<input type="text"/>	\$500.00	
4 Operator(s) in control of day-to-day activities unpermitted for _____ months (# of months = # of violations)	CNR 119-2	CWA 301	<input type="text"/>	\$500.00	
5 SWPPP not prepared (If no SWPPP, leave elements 6 - 31 blank)	NEGP D(1)(a)	CGP 3.1.A	<input type="text"/>	\$4,000.00	
6 SWPPP prepared but prepared after construction start (# of months = # of violations)	NEGP D(1)(b)	CGP 3.1.A	<input type="text"/>	\$75.00	
7 SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc...	N/A	CGP 3.1.B	<input type="text"/>	\$250.00	
8 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control	NEGP NOI	CGP 3.3.A	<input type="text"/>	\$500.00	
9 SWPPP does not have site description, as follows:					
A Nature of activity in description	NEGP D(2)(b)	CGP 3.3.B.1	<input type="text"/>	\$100.00	
B Intended sequence of major activities	NEGP D(2)(b)	CGP 3.3.B.2	<input type="text"/>	\$100.00	
C Total disturbed acreage	NEGP NOI	CGP 3.3.B.3	<input type="text"/>	\$100.00	
D General location map	N/A	CGP 3.3.B.4	<input type="text"/>	\$100.00	
E Site map	NEGP D(2)(a)	CGP 3.3.C	<input type="text"/>	\$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 9F as 1 violation)	NEGP D(2)(a)	CGP 3.3.C.1-8	<input type="text"/>	\$50.00	
G. Location/description industrial activities, like concrete or asphalt batch plants	N/A	CGP 3.3.D	<input type="text"/>	\$500.00	
10 SWPPP does not:					
A Describe all pollution control measures (e.g. BMPs)	NEGP D(3)	CGP 3.4.A	<input type="text"/>	\$750.00	
B Describe sequence for implementation	NEGP D(2)(b)	CGP 3.4.A	<input type="text"/>	\$250.00	

C Detail operator(s) responsible for implementation	NEGP NOI	CGP 3.4.A	<input type="checkbox"/>	\$250.00
11 SWPPP does not describe interim stabilization practices	NEGP D(3)	CGP 3.4.B	<input type="checkbox"/>	\$250.00
12 SWPPP does not describe permanent stabilization practices	NEGP D(3)	CGP 3.4.B	<input type="checkbox"/>	\$250.00
13 SWPPP does not describe a schedule to implement stabilization practices	NEGP D(2)(b)	CGP 3.4.B	<input type="checkbox"/>	\$250.00
14 Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 14 as 1 violation)	N/A	CGP 3.4.C.1-3	<input type="checkbox"/>	\$250.00
15 SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	NEGP D(3)	CGP 3.4.D	<input type="checkbox"/>	\$500.00
16 SWPPP does not have a description of measures that will be water management practices in areas approved by State, Tribal or local officials (e.g., MS4 requirements)	NEGP D(3)	CGP 3.4.E	<input type="checkbox"/>	\$500.00
27 SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	NEGP D(1)(e)	CGP 3.9	<input type="checkbox"/>	\$250.00
28 Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates	NEGP D(6)	CGP 3.10.G	<input type="checkbox"/>	\$500.00
29 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 29 as 1 violation)	NEGP D(1)(e)	CGP 3.11.C	<input type="checkbox"/>	\$50.00
30 Copy of SWPPP not retained on site	NEGP D(1)(c)	CGP 3.12.A	<input type="checkbox"/>	\$500.00
A SWPPP not made available upon request	NEGP D(1)(d)	CGP 3.12.C	<input type="checkbox"/>	\$500.00
31 SWPPP not signed/certified	N/A	CGP 3.12.D	<input type="checkbox"/>	\$500.00
32 Inspections not performed either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.5 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas)	NEGP D(5)	CGP 3.10.A,B	<input type="checkbox"/>	\$75.00
33 Inspections not conducted by qualified personnel	N/A	CGP 3.10.D	<input type="checkbox"/>	\$500.00
34 All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	NEGP D(5)	CGP 3.10.E.	<input type="checkbox"/>	\$50.00
35 All pollution control measures not inspected to ensure proper operation	NEGP D(5)	CGP 3.10.E.	<input type="checkbox"/>	\$500.00
36 Discharge locations are not observed and inspected	NEGP D(5)	CGP 3.10.E.	<input type="checkbox"/> 1	\$50.00
37 For discharge locations that are not accessible, nearby locations are not inspected	NEGP D(5)	CGP 3.10.E.	<input type="checkbox"/>	\$50.00
38 Entrance/exit not inspected for off-site tracking	NEGP D(5)	CGP 3.10.E.	<input type="checkbox"/>	\$500.00
39 Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant	NEGP D(5)	CGP 3.10.G	<input type="checkbox"/>	\$50.00

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 39 as 1 violation)

40	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)	N/A	CGP 3.10.G	<input type="text"/>	\$50.00
41	Sign/notice not posted	N/A	CGP 3.12.B	<input type="text"/>	\$250.00
	A Does not contain copy of complete NOI	N/A	CGP 3.12.B	<input type="text"/>	\$50.00
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign	N/A	CGP 3.12.B	<input type="text"/>	\$50.00
42	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water	NEGP D(3)	CGP 3.13.F	<input type="text"/>	\$500.00
43	Control measures are not properly:				
	A Selected	NEGP D(3)	CGP 3.13.A	<input type="text" value="3"/>	\$500.00
	B Installed	NEGP D(3)	CGP 3.13.A	<input type="text" value="4"/>	\$500.00
	C Maintained	NEGP D(5)	CGP 3.13.A	<input type="text" value="2"/>	\$500.00
	1. Maintenance not performed prior to next anticipated storm event (count each failure of operator to properly select, install, or maintain each BMP as 1 violation)	NEGP D(5)	CGP 3.6.B	<input type="text"/>	\$250.00
44	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	N/A	CGP 3.13.B	<input type="text"/>	\$500.00
45	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.)	NEGP D(2)(e)	CGP 3.13.C	<input type="text" value="1"/>	\$500.00
46	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	NEGP D(3)(c)	CGP 3.13.D	<input type="text" value="1"/>	\$500.00
	*Exceptions:				
	(a) Snow or frozen ground conditions	N/A	CGP 3.13.D.1		
	(b) Activities will be resumed within 14 days	N/A	CGP 3.13.D.2		
	(c) Arid or Semi-arid areas (<20 inches per year)	N/A	CGP 3.13.D.3		
47	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	NEGP D(3)(e)	CGP 3.13.E.1	<input type="text"/>	\$1,000.00
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries	NEGP D(3)(e)	CGP 3.13.E.2	<input type="text"/>	\$1,000.00
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more	NEGP D(5)	CGP 3.6.C	<input type="text"/>	\$500.00
48	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 47 above)	NEGP D(3)(a)	CGP 3.13.E.3	<input type="text"/>	\$500.00
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more	NEGP D(5)	CGP 3.6.C	<input type="text"/>	\$500.00

Total Expedited Settlement: \$7,000

\*Nebraska General Permit NER100000, issued by NDEQ on July 9, 1997, extended on August 1, 2002; Code of Nebraska Rules

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