



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FINDINGS OF VIOLATIONS and ORDER FOR COMPLIANCE

Docket Number: CWA-07-2005-0285

Permit Nos.: KS-R100903; KS-R102040

05 JUL 12 PM 1:26

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.

FINDINGS

1. **Genesis Creek, LLC** (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 Kansas Department of Health of Environment, (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas 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

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 larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

8. Phase II of the Storm Water Regulations were signed October 29, 1999, published December 8, 1999, became effective February 7, 2000, and require compliance for Phase II Construction Activities by March 10, 2003 [64 FR 68722-68851]. Construction sites are automatically designated and required nationwide coverage for "Construction activities that result in a land disturbance of equal to or greater than one acre and less than five acres." or "Construction activities disturbing less than once acre if part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and less than five acres." There is a potential waiver from requirements as determined by the NPDES Permitting Authority for facilities described as "Any automatically designated construction activity where the operator certifies: (1) A rainfall erosivity factor of less than five, or (2) That the activity will occur within an area where controls are not needed based on a TMDL [Total Maximum Daily Load] or, for non-impaired waters that do not require a TMDL, an equivalent analysis for the pollutant(s) of concern." [40 CFR §122.26(b)(15), n.b. Exhibit 1].

9. Pursuant to Section 402(p) of the Act, KDHE issued a General Permit for the discharge of storm water under the NPDES Permit No. S-MCST-0110-1 (the General Permit). The General Permit became effective on March 1, 2003, and will expire on December 31, 2006.

10. Respondent applied for and was issued a permit coverage under the General Permit described above. KDHE issued permits KS-R100903 on May 6, 2003, and KS-R102040 on November 18, 2004, both expiring on December 31, 2006.

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

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

13. Each person that meets the definition of "owner" or "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 or seek coverage under a promulgated storm water general permit before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States.

14. At all times relevant to this action, Respondent was an "owner" or "operator" within the meaning of 40 C.F.R. § 122.2 and the permit, and was therefore required to obtain NPDES permit coverage for its construction activities at the facility.

15. 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 permits.

16. 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:

Mr. Nick Peak
Water Enforcement Branch
EPA Region 7
901 North 5th 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.

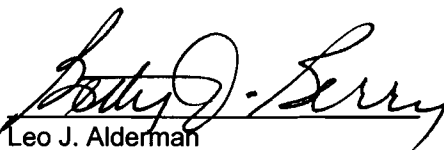
If a criminal action is initiated by U.S. Department of Justice, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, Respondent may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

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.

07/06/05

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: KS-S-MCST-0110-1



1 Legal Name and Mailing Address of Operator

Genesis Creek, LLC
1762 Sunset
Olathe, KS 66061

Telephone Number

913-208-0992

NPDES Permit Number

KS-R100903
KS-R102040

2 Location and Address of Site

Genesis Creek & Genesis Creek Estates
167th & Gardner Road
Gardner, KS 66030

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)?

Joel Riggs
J. Douglas Bohi
5/12/2005
12/21/2004

Kill Creek
46.8

	Kansas Citation Reference*	National Permit Citation Reference**	No. of Violations	Violation Settlement Amount	Settlement Offer
3 Operator(s) in control of site specifications unpermitted for _____ months (# of months = # of violations)	KAR 28-16-153	CWA 301	0	\$500.00	\$0
4 Operator(s) in control of day-to-day activities unpermitted for _____ months (# of months = # of violations)	KAR 28-16-153	CWA 301	0	\$500.00	\$0
5 SWPPP not prepared (If no SWPPP, leave elements 6 - 31 blank)	KSGP VII(p.6)	CGP 3.1.A	0	\$4,000.00	\$0
6 SWPPP prepared but prepared after construction start (# of months = # of violations)	KSGP VII(p.6)	CGP 3.1.A	0	\$75.00	\$0
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...	KSGP VII(p.8)	CGP 3.1.B	1	\$250.00	\$250
8 SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control	N/A	CGP 3.3.A	0	\$500.00	\$0
9 SWPPP does not have site description, as follows:					
A Nature of activity in description	KSGP VII(p.7)	CGP 3.3.B.1	0	\$100.00	\$0
B Intended sequence of major activities	KSGP VII(p.7)	CGP 3.3.B.2	1	\$100.00	\$100
C Total disturbed acreage	KSGP VII(p.7)	CGP 3.3.B.3	0	\$100.00	\$0
D General location map	KSGP VII(p.7)	CGP 3.3.B.4	0	\$100.00	\$0
E Site map	KSGP VII(p.7)	CGP 3.3.C	0	\$500.00	\$0
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)	KSGP VII(p.7)	CGP 3.3.C.1-8	2	\$50.00	\$100
G. Location/description industrial activities, like concrete or asphalt batch plants	N/A	CGP 3.3.D	0	\$500.00	\$0
10 SWPPP does not:					
A Describe all pollution control measures (e.g. BMPs)	KSGP VII(p.7)	CGP 3.4.A	0	\$750.00	\$0
B Describe sequence for implementation	KSGP VII(p.7)	CGP 3.4.A	0	\$250.00	\$0

C Detail operator(s) responsible for implementation	N/A	CGP 3.4.A	<input type="text" value="0"/>	\$250.00	\$0
11 SWPPP does not describe interim stabilization practices	KSGP VII(p.7-8)	CGP 3.4.B	<input type="text" value="0"/>	\$250.00	\$0
12 SWPPP does not describe permanent stabilization practices	KSGP VII(p.7-8)	CGP 3.4.B	<input type="text" value="1"/>	\$250.00	\$250
13 SWPPP does not describe a schedule to implement stabilization practices	KSGP VII(p.7)	CGP 3.4.B	<input type="text" value="1"/>	\$250.00	\$250
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)	KSGP VII(p.7)	CGP 3.4.C.1-3	<input type="text" value="0"/>	\$250.00	\$0
15 SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas	KSGP VII(p.8)	CGP 3.4.D	<input type="text" value="0"/>	\$500.00	\$0
16 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	KSGP VII(p.8)	CGP 3.4.E	<input type="text" value="1"/>	\$500.00	\$500
17 SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit	KSGP VII(p.7-8)	CGP 3.4.F	<input type="text" value="1"/>	\$500.00	\$500
18 SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	KSGP VII(p.8)	CGP 3.4.G	<input type="text" value="1"/>	\$500.00	\$500
19 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	KSGP VII(p.8)	CGP 3.4.H	<input type="text" value="1"/>	\$250.00	\$250
20 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	N/A	CGP 3.4.I	<input type="text" value="0"/>	\$500.00	\$0
21 SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP	N/A	CGP 3.5	<input type="text" value="0"/>	\$500.00	\$0
22 SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	KSGP VII(p.7)	CGP 3.5	<input type="text" value="1"/>	\$500.00	\$500
23 Endangered Species Act documentation is not in SWPPP	KSGP VII(p.7)	CGP 3.7	<input type="text" value="0"/>	\$500.00	\$0
24 Historic Properties (Reserved)	KSGP VII(p.7)	CGP 1.3.C.7	<input type="text" value="0"/>	\$500.00	\$0
25 Copy of permit and/or NOI not in SWPPP (count each omission under 25 as 1 violation)	N/A	CGP 3.8	<input type="text" value="0"/>	\$250.00	\$0
26 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)	N/A	CGP 3.9	<input type="text" value="0"/>	\$750.00	\$0
27 SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	N/A	CGP 3.9	<input type="text" value="0"/>	\$250.00	\$0
28 Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates	KSGP VII(p.9)	CGP 3.10.G	<input type="text" value="0"/>	\$500.00	\$0
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)	KSGP VII(p.7)	CGP 3.11.C	<input type="text" value="0"/>	\$50.00	\$0
30 Copy of SWPPP not retained on site	KSGP VII(p.7)	CGP 3.12.A	<input type="text" value="0"/>	\$500.00	\$0
A SWPPP not made available upon request	KSGP VII(p.7)	CGP 3.12.C	<input type="text" value="0"/>	\$500.00	\$0
31 SWPPP not signed/certified	KSGP VII(p.6)	CGP 3.12.D	<input type="text" value="0"/>	\$500.00	\$0
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)	KSGP VII(p.9)	CGP 3.10.A,B	<input type="text" value="0"/>	\$75.00	\$0
33 Inspections not conducted by qualified personnel	KSGP VII(p.9)	CGP 3.10.D	<input type="text" value="0"/>	\$500.00	\$0
34 All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="0"/>	\$50.00	\$0
35 All pollution control measures not inspected to ensure proper operation	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="0"/>	\$500.00	\$0
36 Discharge locations are not observed and inspected	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="1"/>	\$50.00	\$50
37 For discharge locations that are not accessible, nearby locations are not inspected	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="1"/>	\$50.00	\$50
38 Entrance/exit not inspected for off-site tracking	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="3"/>	\$500.00	\$1,500
39 Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant	KSGP VII(p.9)	CGP 3.10.G	<input type="text" value="0"/>	\$50.00	\$0

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 to sign/certify as 1 violation)	KSGP VII(p.9)	CGP 3.10.G	<input type="text" value="1"/>	\$50.00	\$50
41	Sign/notice not posted	KSGP V(p.5)	CGP 3.12.B	<input type="text" value="0"/>	\$250.00	\$0
	A Does not contain copy of complete NOI	KSGP V(p.5)	CGP 3.12.B	<input type="text" value="0"/>	\$50.00	\$0
	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" value="0"/>	\$50.00	\$0
42	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water	KSGP VII(p.8)	CGP 3.13.F	<input type="text" value="0"/>	\$500.00	\$0
43	Control measures are not properly:					
	A Selected	KSGP VII(p.6)	CGP 3.13.A	<input type="text" value="1"/>	\$500.00	\$500
	B Installed	KSGP VII(p.6)	CGP 3.13.A	<input type="text" value="2"/>	\$500.00	\$1,000
	C Maintained	KSGP VII(p.6)	CGP 3.13.A	<input type="text" value="1"/>	\$500.00	\$500
	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)	KSGP VII(p.6)	CGP 3.6.B	<input type="text" value="0"/>	\$250.00	\$0
44	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts	KSGP X(p.12)	CGP 3.13.B	<input type="text" value="1"/>	\$500.00	\$500
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.)	KSGP VII(p.8)	CGP 3.13.C	<input type="text" value="1"/>	\$500.00	\$500
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	KSGP VII(p.8)	CGP 3.13.D	<input type="text" value="1"/>	\$500.00	\$500
	*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	KSGP VII(p.8)	CGP 3.13.E.1	<input type="text" value="0"/>	\$1,000.00	\$0
	A Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries	KSGP VII(p.8)	CGP 3.13.E.2	<input type="text" value="0"/>	\$1,000.00	\$0
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more	KSGP VII(p.8)	CGP 3.6.C	<input type="text" value="0"/>	\$500.00	\$0
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)	KSGP VII(p.8)	CGP 3.13.E.3	<input type="text" value="0"/>	\$500.00	\$0
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more	KSGP VII(p.8)	CGP 3.6.C	<input type="text" value="0"/>	\$500.00	\$0
Total Expedited Settlement:						\$8,350

*Kansas General Permit No. S-MCST-0110-1, issued by KDHE on January 18, 2002, revised March 1, 2003; KS Administrative Regulations

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