



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED STORM WATER SETTLEMENT AGREEMENT

Docket Number: CWA-07-2005-0011

NPDES No. NER-101197

05 JAN 18 AM 9:05

ENVIRONMENTAL PROTECTION AGENCY REGION VII REGIONAL HEARING CLERK

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.

Attached is a "Findings and Alleged Violations Form" (herein the "Form"), which is hereby incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent has committed the violation(s) set forth in the Form.

Respondent had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1311, and/or failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations and any "person" who "discharges pollutants" from a "point source" to "waters of the United States". Respondent neither admits nor denies the allegation(s) specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("CAFO") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 CFR § 22.13(b). The parties enter into this CAFO in order to settle the civil violation(s) specified in the Form for a penalty of \$6,000. Respondent consents to the assessment of this penalty, and waives the right to contest the allegation(s) specified in the Form, and waives the right to appeal.

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program. Within ten (10) days of the effective date of this CAFO Respondent shall submit a bank, cashiers or certified check for the amount specified above, payable to the "Treasurer, United States of America" to:

U.S. EPA, Region 7
Docket No.: CWA-07- 2005-0011
P.O. Box 371099M
Pittsburgh, PA 15251

Respondent shall write the docket number of this case on the penalty payment check. This CAFO, and later, a photocopy of your check, is to be returned to the address at the top of this document, ATTN: Sally McDaniel.

This CAFO settles EPA's civil penalty claims against Respondent for the CWA violation(s) described in the Form.

However, EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation, and does not waive its right to issue a compliance order for the violation(s) described in the Form. EPA has determined this CAFO to be in the public interest, and Respondent agrees.

This CAFO is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the Order is filed by a commenter pursuant to §309(g)(4)(C) of the Act, 33 U.S.C. §1319(g)(4)(C) and Part 22. If Respondent does not sign and return this CAFO as presented within thirty (30) days of the date of its receipt, the proposed CAFO is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violation(s) identified in the Form.

APPROVED BY EPA:

Signature: [Signature] Date: 01/13/05
Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT in accordance with 40 CFR §122.22:

Name (print): Horgan Development Company
Title (print): PRES

Signature: [Signature]

Having determined that this CAFO is authorized by law, IT IS SO ORDERED:

Signature: [Signature] Date: Jan. 14, 2005
Robert L. Patrick
Regional Judicial Officer

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 installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed	NEGP D(3)	CGP 3.4.E	<input type="checkbox"/>	\$500.00
17 SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit	NEGP D(3)	CGP 3.4.F	<input type="checkbox"/> 1	\$500.00
18 SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust	NEGP D(2)(f)	CGP 3.4.G	<input type="checkbox"/>	\$500.00
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	NEGP D(2)(e)	CGP 3.4.H	<input type="checkbox"/> 1	\$250.00
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	NEGP D(2)(d)	CGP 3.4.I	<input type="checkbox"/>	\$500.00
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="checkbox"/>	\$500.00
22 SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges	NEGP D&F	CGP 3.5	<input type="checkbox"/>	\$500.00
23 Endangered Species Act documentation is not in SWPPP	N/A	CGP 3.7	<input type="checkbox"/>	\$500.00
24 Historic Properties (Reserved)	N/A	CGP 1.3.C.7	<input type="checkbox"/>	\$500.00
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="checkbox"/>	\$250.00
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)	NEGP D(4)	CGP 3.9	<input type="checkbox"/>	\$750.00
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="3"/>	\$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: **\$6,000**

*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>

IN THE MATTER OF Horgan Development Company, Respondent
Docket No. CWA-07-2005-0011

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited Storm Water Settlement Agreement was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kristina Kemp
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

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

Dated: 1/18/05


Kathy Robinson
Regional Hearing Clerk