



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED STORM WATER SETTLEMENT AGREEMENT

Docket Number: CWA-07-2005-0042

NPDES No. KSR-101562

Rec'd
DEC 06 2004

05 JAN 25 PM 1:53

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Lionsgate Marketplace, L.L.C. (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 \$11,075. 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- 2005-0042
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:

Betty J. Berry Date: 01/21/05
Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT in accordance with 40 CFR §122.22:

Name (print): Ralph W. Varnum
Title (print): Managing Member
Signature: Ralph W. Varnum

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

Robert L. Patrick Date Jan. 25, 2005
Robert L. Patrick
Regional Judicial Officer

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	Telephone Number	NPDES Permit Number
Lionsgate Marketplace LLC 6800 College Blvd, Suite 125 Overland Park, KS 66211	913-491-8900	KSR-10 1562

2 Location and Address of Site
Steinmart 14401 Metcalf Overland Park, KS 66223

Name of Site Contact (ESO Worksheet recipient):	Ralph Varnum
Name of Authorized Official (40 CFR 122.22)	
Inspection Date:	6/28/2004
Start Construction Date:	4/1/2004
Estimated Completion Construction Date:	12/1/2004
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	
Acres Disturbed (whole common plan):	7
Is Site Eligible for Rainfall Erosivity or TMDL Waiver per 40 CFR 122.26(b)(15)?	

	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	1	\$500.00	\$500
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	0	\$250.00	\$0
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	0	\$100.00	\$0
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	0	\$50.00	\$0
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="0"/>	\$250.00	\$0
13 SWPPP does not describe a schedule to implement stabilization practices	KSGP VII(p.7)	CGP 3.4.B	<input type="text" value="0"/>	\$250.00	\$0
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="0"/>	\$500.00	\$0
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="0"/>	\$500.00	\$0
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="0"/>	\$500.00	\$0
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="0"/>	\$250.00	\$0
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="0"/>	\$500.00	\$0
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="1"/>	\$75.00	\$75
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="0"/>	\$50.00	\$0
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="0"/>	\$50.00	\$0
38 Entrance/exit not inspected for off-site tracking	KSGP VII(p.9)	CGP 3.10.E.	<input type="text" value="0"/>	\$500.00	\$0
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

Item	KSGP	CGP	Count	Amount	Settlement
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)	KSGP VII(p.9)	CGP 3.10.G	0	\$50.00	\$0
41 Sign/notice not posted	KSGP V(p.5)	CGP 3.12.B	0	\$250.00	\$0
A Does not contain copy of complete NOI	KSGP V(p.5)	CGP 3.12.B	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	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	0	\$500.00	\$0
43 Control measures are not properly:					
A Selected	KSGP VII(p.6)	CGP 3.13.A	0	\$500.00	\$0
B Installed	KSGP VII(p.6)	CGP 3.13.A	10	\$500.00	\$5,000.00
C Maintained	KSGP VII(p.6)	CGP 3.13.A	9	\$500.00	\$4,500.00
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)	KSGP VII(p.6)	CGP 3.6.B	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	0	\$500.00	\$0
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	1	\$500.00	\$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	KSGP VII(p.8)	CGP 3.13.D	1	\$500.00	\$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	KSGP VII(p.8)	CGP 3.13.E.1	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	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	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	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	0	\$500.00	\$0

Total, Expedited Settlement: **\$11,075**

*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>

IN THE MATTER OF Lionsgate Marketplace LLC, Respondent
Docket No. CWA-07-2005-0042

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:

Ralph W. Varnum, Managing Member
Lionsgate Marketplace LLC
6800 College Blvd., Suite 125
Overland Park, Kansas 66211

Dated: 1/26/05


Kathy Robinson
Regional Hearing Clerk