**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Region 7, 901 North 5th Street, Kansas City, KS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT**
Docket Number: **CWA-07-2007-0060**

**Rockfire Development, Inc.** ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

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 any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") 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 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of **$12,000**. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondent certifies that, within ten (10) days of receiving notice from EPA that the Agreement is effective thirty (30) days from the date it is signed by the Appropriate Official, Respondent shall **submit a bank, cashiers or certified check**, with case name and docket number noted, for the amount specified above **payable to the "Treasurer, United States of America,"** via certified mail, to:

**U.S. EPA, Region 7**
**P.O. Box 371099M**
**Pittsburgh, PA 15251**

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. 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. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Presiding Officer unless a petition to set aside the Order is filed by a commenter pursuant to Section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), and Part 22.

APPROVED BY EPA:

Date 12/28/07
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): RockFire Development, Inc.
Title (print): J.E. Santaularia
President
Signature: Date: Nov 8, 07

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

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

Date Jan 2, 2008
Robert J. Patrick
Regional Judicial Officer

# Expedited Settlement Offer Worksheet
## Deficiencies Form

*Consult instructions regarding eligibility criteria and procedures prior to use*

KS-S-MCST-0110-1

| | LEGAL NAME AND MAILING ADDRESS OF OPERATOR | Telephone Number | NPDES Permit Number |
|---|---|---|---|
| 1 | Rockfire Development, Inc.<br>P.O. Box 1753<br>Lawrence, KS 66044 | 785-550-5500 | |

| | |
|---|---|
| Inspector Name: | St Germain |
| Inspector Agency: | US EPA |
| Entrance Interview Conducted: | Yes |
| Exit Interview Conducted: | Yes |
| Exit Interview given to: | Steve Younger |
| Exit Interview time: | 12:30 Date: 04/18/2007 |

| | LOCATION AND ADDRESS OF SITE |
|---|---|
| 2 | RockFire at the Lake Subdivision<br>SE 45th Street<br>Topeka, KS 66609 |

| FACILITY DESCRIPTION / CONTACT NAMES | |
|---|---|
| Name of Site Contact (ESO Worksheet recipient): | Jes Santaularia |
| Name of Authorized Official (40 CFR 122.22): | Jes Santaularia |
| Inspection Date: | 04/18/2007 |
| Start Construction Date: | 11/01/2006 |
| Estimated Completion Construction Date: | 03/01/2008 |
| If Unpermitted, Number of Months Unpermitted: | 10 |
| Name of Receiving Water Body (Indicate whether 303(d) listed): | Lake Shawnee |
| Acres Currently Disturbed \| Acres to be Disturbed in Whole Common Plan: | 15.00 \| 57.00 |
| Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)? | No |

| | | PERMIT COVERAGE | Notes | Citation Reference** | State Citation Reference*** | R C A* | No. of Deficiencies | | Dollar Amount | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 3 | | Operator unpermitted for _____months (# months unpermitted equals number of violations) | | CWA 301 | KAR 28-16-153 | | 10 | X | $500.00 | = | $5,000 |
| | | **SWPPP REVIEW** | | | | | | | | | |
| 4 | | SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank) | | CGP 3.1.A | KSGP VII p.6 | | 1 | | $5,000.00 | = | $5,000 |
| 5 | | SWPPP prepared but prepared after construction start (# of months = # of violations) | | CGP 3.1.A | KSGP VII p.6 | | | X | $75.00 | = | |
| 6 | | 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,** | | CGP 3.1.B | KSGP VII p.8 | | | | $250.00 | = | |
| 7 | | SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control | | CGP 3.3.A | KSGP VII p.7 | | | | $500.00 | = | |
| 8 | | SWPPP does not have site description, as follows: | | | | | | | | | |
| | A | Nature of activity in description | | CGP 3.3.B.1 | KSGP VII p.7 | | | | $100.00 | = | |
| | B | Intended sequence of major activities | | CGP 3.3.B.2 | KSGP VII p.7 | | | | $100.00 | = | |
| | C | Total disturbed acreage | | CGP 3.3.B.3 | KSGP VII p.7 | | | | $100.00 | = | |
| | D | General location map | | CGP 3.3.B.4 | KSGP VII p.7 | | | | $100.00 | = | |
| | E | Site map | | CGP 3.3.C | KSGP VII p.7 | | | | $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 8F as 1 violation) | | CGP 3.3.C.1-8 | KSGP VII p.7 | | | X | $50.00 | = | |
| | G | Location/description industrial activities, like concrete or asphalt batch plants | | CGP 3.3.D | N/A | | | | | | |
| 9 | | SWPPP does not: | | | | | | | | | |
| | A | Describe all pollution control measures (e.g. BMPs) | | CGP 3.4.A | KSGP VII p.7 | | | | $750.00 | = | |
| | B | Describe sequence for implementation | | CGP 3.4.A | KSGP VII p.7 | | | | $250.00 | = | |
| | C | Detail operator(s) responsible for implementation | | CGP 3.4.A | N/A | | | | | | |
| 10 | | SWPPP does not describe interim stabilization practices | | CGP 3.4.B | KSGP VII p.7 & p.8 | | | | $250.00 | = | |
| 11 | | SWPPP does not describe permanent stabilization practices | | CGP 3.4.B | KSGP VII p.7 & p.8 | | | | $250.00 | = | |
| 12 | | SWPPP does not describe a schedule to implement stabilization practices | | CGP 3.4.B | KSGP VII p.7 | | | | $250.00 | = | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 13 | | Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation) | | CGP 3.4.C.1-3 | N/A | | | | | | |
| 14 | | SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas | | CGP 3.4.D | KSGP VII p.8 | | | | $500.00 | = | |
| 15 | | 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 | | CGP 3.4.E | KSGP VII p.8 | | | | $500.00 | = | |
| 16 | | SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit | | CGP 3.4.F | KSGP VII p.8 | | | | $500.00 | = | |
| 17 | | SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust | | CGP 3.4.G | KSGP VII p.8 | | | | $500.00 | = | |
| 18 | | 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 | | CGP 3.4.H | KSGP VII p.8 | | | | $250.00 | = | |
| 19 | | 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 | | CGP 3.4.I | N/A | | | | | | |
| 20 | | SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP | | CGP 3.5 | N/A | | | | | | |
| 21 | | SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges | | CGP 3.5 | N/A | | | | | | |
| 22 | | Endangered Species Act documentation is not in SWPPP | | CGP 3.7 | KSGP VII p.7 | | | | $500.00 | = | |
| 23 | | Historic Properties (Reserved) | | | | | | | | | |
| 24 | | Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation) | | CGP 3.8 | N/A | | | | | | |
| 25 | | 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) | | CGP 3.9 | N/A | | | | | | |
| 26 | | SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans | | CGP 3.9 | N/A | | | | | | |
| 27 | | Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates | | CGP 3.10.G | KSGP IX p.9 | | | | $500.00 | = | |
| 28 | | 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 under 28 as 1 violation) | | CGP 3.11.C | KSGP VII p.6 | | | X | $50.00 | = | |
| 29 | | Copy of SWPPP not retained on site | | CGP 3.12.A | KSGP VII p.7 | | | | $500.00 | = | |
| | | A SWPPP not made available upon request | | CGP 3.12.C | KSGP VII p.7 | | | | $500.00 | = | |
| 30 | | SWPPP not signed/certified | | CGP 3.12.D | KSGP IX p.10 | | | | $500.00 | = | |
| | | **INSPECTIONS** | | | | | | | | | |
| 31 | | Inspections not performed and documented 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) (Count each failure to inspect and document as one violation). | | CGP 3.10.A, 3.10.B | KSGP VII p.9 | | 8 | X | $250.00 | = | $2,000 |
| | | No inspections conducted and documented (if True, then leave elements 32-39 blank) | | | | | | | True or False | | |
| | | Number of Inspections expected if performed every 7 days: | 24 | | | | | | | | |
| | | Number of Inspections expected if performed bi-weekly: | 12 | | | | | | | | |
| | | If known, number of days of rainfall of >0.5" | | | | | | | | | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 32 | | Inspections not conducted by qualified personnel | | CGP 3.10.D | N/A | | | | $50.00 | = |
| 33 | | All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected | | CGP 3.10.E | KSGP VII p.9 | | | | $50.00 | = |
| 34 | | All pollution control measures not inspected to ensure proper operation | | CGP 3.10.E | KSGP VII p.9 | | | | $50.00 | = |
| 35 | | Discharge locations are not observed and inspected | | CGP 3.10.E | KSGP VII p.9 | | | | $50.00 | = |
| 36 | | For discharge locations that are not accessible, nearby locations are not inspected | | CGP 3.10.E | KSGP VII p.9 | | | | $50.00 | = |
| 37 | | Entrance/exit not inspected for off-site tracking | | CGP 3.10.E | N/A | | | | | |
| 38 | | Site inspection report does not include: **date, name** and qualifications of inspector, weather information, **location of sediment/pollutant 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 38 as 1 violation) | | CGP 3.10.G | KSGP VII p.9 | | | X | $50.00 | = |
| 39 | | Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation) | | CGP 3.10.G | KSGP VII p.9 | | | X | $50.00 | = |
| | | **AVAILABILITY OF RECORDS** | | | | | | | | |
| 40 | | Sign/notice not posted | | CGP 3.12.B | N/A | | | | | |
| | A | Does not contain copy of complete NOI | | CGP 3.12.B | KSGP V p.5 | | | | $50.00 | = |
| | B | Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign | | CGP 3.12.B | N/A | | | | | |
| | | **BEST MANAGEMENT PRACTICES** | | | | | | | | |
| 41 | | No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water | | CGP 3.13.F | KSGP VII p.8 | | | | $500.00 | = |
| 42 | | Control measures are not properly: | | | | | | | | |
| | A | Selected, installed and maintained | | CGP 3.13.A | KSGP VII p.6 & p.7 | | | | $500.00 | = |
| | B | Maintenance not performed prior to next anticipated storm event | | CGP 3.6.B | KSGP VII p 6 & p.9 | | | | $250.00 | = |
| | | (count each failure to select, install, maintain each BMP as one violation | | | | | | | | |
| 43 | | When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts | | CGP 3.13.B | N/A | | | | | |
| 44 | | 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.) | | CGP 3.13.C | KSGP VII p.8 | | | | $500.00 | = |
| 45 | | Stabilization measures are not initiated as soon as practible on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation | | CGP 3.13.D | KSGP VII p.8 | | | | $500.00 | = |
| | | *Exceptions: | | | N/A | | | | | |
| | | (a) Snow or frozen ground conditions | | | N/A | | | | | |
| | | (b) Activities will be resumed within 14 days | | | N/A | | | | | |
| | | (c) Arid or Semi-arid areas (<20 inches per | | | N/A | | | | | |
| 46 | | 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 | | CGP 3.13.E.1 | KSGP VII p.8 | | | | $1,000.00 | = |
| | A | Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope | | CGP 3.13.E.2 | KSGP VII p.8 | | | | $1,000.00 | = |
| | B | Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more | | CGP 3.6.C | N/A | | | | | |
| 47 | | 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 46 above) | | CGP 3.13.E.3 | KSGP VII p.7 & p.8 | | | | $500.00 | = |
| | A | Sediment not removed from sediment trap when design capacity reduced by 50% or more | | CGP 3.6.C | N/A | | | | | |
| | | **SMALL BUSINESS EVALUATION** | | | | | | | | |
| 48 | | Is the Owner/Operator a Small Business? | | | | | | | | |

A *small business* is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.

**Total Expedited Settlement:** **$12,000**

* Requires Corrective Action
** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm
*** Kansas Water Pollution Control General Permit and Authorization to Discharge - Issued by KDHE on March 1, 2003 - http://kdhe.state.ks.us/stormwater/resources/cgp_revision_final.pdf

IN THE MATTER OF Rockfire Development, Inc., Respondent
Docket No. CWA-07-2007-0060

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristina Gonzales
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:

RockFire Development, Inc.
J.E. Santaularia, President
PO Box 1753
Lawrence, Kansas 66044

Dated: 1/2/08

Kathy Robinson
Hearing Clerk, Region 7