UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: **CWA-07-2007-0084**, NPDES No.:**IA-7823-7621**

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII REGIONAL HEARING CLERK

White Birch, LLC ("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 **$5,250**. 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: 10/10/07

William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

APPROVED BY RESPONDENT:

Name (print): White Birch, L.L.C.

Title (print): White Birch, L.L.C.

Signature: Date: 9/25/07

Ted Grob – Manager

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

IA: General Permit No. 2

	LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number
1	Ted Grob White Birch, L.L.C. 1309 50th St West Des Moines, IA 50266	515-221-2333	IA-7823-7621

Inspector Name:	Lyle Cowles
Inspector Agency:	US EPA
Entrance Interview Conducted:	Yes
Exit Interview Conducted:	Yes
Exit Interview given to:	Linda Aldrich
Exit Interview time:	16:00 Date: 05/24/2007

	LOCATION AND ADDRESS OF SITE
2	Reunion at White Birch SW Oralabor Road and SW State St. Ankeny, IA

FACILITY DESCRIPTION / CONTACT NAMES	
Name of Site Contact (ESO Worksheet recipient):	Ted Grob
Name of Authorized Official (40 CFR 122.22):	Ted Grob
Inspection Date:	05/24/2007
Start Construction Date:	09/01/2006
Estimated Completion Construction Date:	12/31/2008
If Unpermitted, Number of Months Unpermitted:	
Name of Receiving Water Body (Indicate whether 303(d) listed):	Saylor Creek
Acres Currently Disturbed | Acres to be Disturbed in Whole Common Plan:	10.00 | 27.00
Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?	No

	PERMIT COVERAGE	Notes	Citation Reference**	State Citation Reference***	RCA*	No. of Deficiencies		Dollar Amount		Total
3	Operator unpermitted for _____months (# months unpermitted equals number of violations)		CWA 301	IAC 567-64.6(1)			X	$500.00	=	
	SWPPP REVIEW									
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A	IAGP IV				$5,000.00	=	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A	IAGP IV			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, etc…		CGP 3.1.B	N/A						
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	IAGP IV(D)(7)				$500.00	=	
8	SWPPP does not have site description, as follows:									
A	Nature of activity in description		CGP 3.3.B.1	IAGP IV(D)(1)(A)				$100.00	=	
B	Intended sequence of major activities		CGP 3.3.B.2	IAGP IV(D)(2)				$100.00	=	
C	Total disturbed acreage		CGP 3.3.B.3	IAGP IV(D)(1)(B)				$100.00	=	
D	General location map		CGP 3.3.B.4	IAGP IV(D)(1)(D)				$100.00	=	
E	Site map		CGP 3.3.C	IAGP IV(D)(1)(D)				$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 ageas, **surface waters, discharge points**, areas of final stabilization (count each omission under 8F as 1 violation)		CGP 3.3.C.1-8	IAGP IV(D)(1)(D)			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	IAGP IV(D)(2)				$750.00	=	
B	Describe sequence for implementation		CGP 3.4.A	IAGP IV(D)(2)				$250.00	=	
C	Detail operator(s) responsible for implementation		CGP 3.4.A	IAGP IV(D)(7)				$250.00	=	
10	SWPPP does not describe interim stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)				$250.00	=	
11	SWPPP does not describe permanent stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)				$250.00	=	
12	SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B	IAGP IV(D)(2)(A)(1)				$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			X			
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	IAGP IV(D)(2)(A)(2)				$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	IAGP IV(D)(2)(B)				$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	IAGP IV(D)(2)(C)				$500.00	=	
17		SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G	IAGP IV(D)(2)(C)(2)				$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	IAGP IV(D)(2)(C)(1)				$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	IAGP IV(D)(5)				$500.00	=	
21		SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5	IAGP IV(D)(5)				$500.00	=	
22		Endangered Species Act documentation is not in SWPPP		CGP 3.7	N/A						
23		Historic Properties (Reserved)			N/A						
24		Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 3.8	IAGP II(C)(1)(G)(3)			X			
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	IAGP IV(D)(2)(D)				$750.00	=	
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	IAGP V(A)				$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	IAGP IV(D)(4)(B)			X	$50.00	=	
29		Copy of SWPPP not retained on site		CGP 3.12.A	IAGP V(B)				$500.00	=	
		A SWPPP not made available upon request		CGP 3.12.C	IAGP V(B)				$500.00	=	
30		SWPPP not signed/certified		CGP 3.12.D	IAGP VI(G)				$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).	Rain Events over 0.5 on 9/9-10/06, 4/1/07, and 5/6-7/07	CGP 3.10.A, 3.10.B	IAGP IV(D)(4)		3	X	$250.00	=	$750
		No inspections conducted and documented (if True, then leave elements 32-39 blank)			IAGP IV(D)(4)		FALSE		True or False		
		Number of Inspections expected if performed every 7 days:	37								
		Number of Inspections expected if performed bi-weekly:	18		N/A						
		If known, number of days of rainfall of >0.5"	15								

32		Inspections not conducted by qualified personnel		CGP 3.10.D	IAGP IV(D)(4)				$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	IAGP IV(D)(4)(A)				$50.00	=	
34		All pollution control measures not inspected to ensure proper operation		CGP 3.10.E	IAGP IV(D)(4)(A)				$50.00	=	
35		Discharge locations are not observed and inspected		CGP 3.10.E	IAGP IV(D)(4)(A)				$50.00	=	
36		For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E	N/A						
37		Entrance/exit not inspected for off-site tracking		CGP 3.10.E	IAGP IV(D)(4)(A)				$50.00	=	
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	IAGP IV(D)(4)(C)			X	$50.00	=	
39		Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)		CGP 3.10.G	IAGP IV(D)(4)(C)			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	N/A						
	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	IAGP IV(D)(2)(B)(2)				$500.00	=	
42		Control measures are not properly:	No silt fence in areas 1-2 & 5-7,partial silt fence in area 4, and silt fence down in area 3; No stabilized construction entrance; Storm sewer inlets not protected and/or maintained								
	A	Selected, installed and maintained		CGP 3.13.A	IAGP IV(D)(2)		9		$500.00	=	$4,500
	B	Maintenance not performed prior to next anticipated storm event		CGP 3.6.B	N/A						
		(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	IAGP IV(D)(2)(C)(1)				$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	IAGP IV(D)(2)(A)(1)				$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	IAGP IV(D)(2)(A)(2)(a)				$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	IAGP IV(D)(2)(A)(2)(a)				$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	IAGP IV(D)(2)(A)(2)(b)				$500.00	=	
	A	Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C	N/A			X			
		SMALL BUSINESS EVALUATION									
48		Is the Owner/Operator a Small Business?					Yes				

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 indiviudals (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: **$5,250**

* Requires Corrective Action
** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2003, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm
*** Iowa Department of Natural Resources NPDES General Permit No.2 issued by IDNR on October 1, 2002 - http://www.iowadnr.com/water/stormwater/index.html

IN THE MATTER OF White Birch, LLC, Respondent
Docket No. CWA-07-2007-0084

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:

Ted Grob, Manager
White Birch, LLC
1309 50th Street
West Des Moines, Iowa 50266

Dated: 1/2/08

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7