



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAY 19 2006

MEMORANDUM

SUBJECT: Revised Expedited Settlement Offer Program for Storm Water (Construction)

FROM: Walker B. Smith, Director *WBS*
Office of Civil Enforcement

TO: Water Management Division Directors
Regions I, III, IV, V, VII, IX

Enforcement Division Directors
Regions II, VI, VIII, X

Regional Counsels
Regions I - X

This memorandum transmits the final revised framework for the Expedited Settlement Offer (ESO) Program for Storm Water, which supersedes the "Expedited Settlement Offer (ESO) Program for Storm Water" originally issued on August 21, 2003. The revised ESO program includes a variety of modifications based on issues identified during the initial pilot implementation period. This ESO program is intended to promote compliance with NPDES storm water regulations at construction sites by providing an expedited enforcement mechanism in situations where environmental impacts are potentially less significant, violations can be quickly corrected and appropriate penalties easily collected. I want to thank the Regions for their participation in revising this enforcement tool; their knowledge and experience were extremely valuable throughout the revision process.

Storm water violations at construction sites can involve potentially significant cumulative negative environmental impacts. Issuing timely and consistent enforcement actions to compel compliance with storm water requirements at construction sites ensures prompt correction of potentially harmful violations and deters future noncompliance. An expedited settlement offer provides an efficient "real time" enforcement mechanism in situations where violations can be quickly corrected and an appropriate penalty promptly collected.

The purpose of expedited settlements is to supplement, not replace, other more traditional enforcement approaches. ESOs should be part of a comprehensive compliance and enforcement strategy that encompasses the full range of compliance and enforcement tools. Regions implementing the ESO program should also use traditional administrative and judicial enforcement mechanisms to ensure a well-balanced enforcement program. Traditional enforcement actions should be pursued for violations where an expedited settlement offer does not adequately address the level of noncompliance or the nature of the violator (e.g., where there is evidence of significant environmental harm, large economic benefit, or a recalcitrant violator).

In using the ESO approach, we encourage regions to consult additional storm water guidance in reaching their decisions. In particular, we recommend that the regions refer to the *Enforcement Response Guide for Storm Water (Construction) (ERG)*. The ERG describes factors to consider when selecting from the different types of enforcement actions. The *2003 Storm Water Compliance and Enforcement Strategy* and the *2005 Performance-Based Strategy for Storm Water*, both of which rely on an environmental harm-based targeting approaches, should also be consulted to focus priorities on storm water dischargers/discharges that pose the most significant harm to the environment (e.g., non-filers or high growth communities where storm water runoff may result in high sediment loadings).

Before applying the ESO, regions should familiarize themselves with the revised ESO program. The revisions have altered both the scope and the process of the program. The most significant revisions include the following:

- eliminating the 50-acre limit for ESO-eligible sites;
- extending eligibility to all operators except those who, in the past five years, have been issued a formal enforcement action for violation of either the multi-sector general permit (MSGP), the construction general permit (CGP), or an individual storm water permit issued by EPA or a state: 1) at the facility where the instant violation occurred; or 2) at two or more facilities, under the ownership, operation, or control of the operator;
- increasing the appropriate time between an inspection and EPA's mailing of an ESO from seven (7) to twenty-one (21) days;
- limiting the scope of respondent's certification in the *Expedited Settlement Agreement* to correction of deficiencies identified during the inspection and payment of penalties;
- capping the total penalties for Storm Water Pollution Protection Plan (SWPPP) violations at \$4500 so as not to exceed the penalty for failure to submit a SWPPP, which has been increased from \$4000 to \$5000; and
- clarifying that generally ESOs should not be issued simultaneously with administrative compliance orders for the same violation.

A joint regional and OCE workgroup revised the following documents: the ESO procedures (see Attachment 1), the penalty calculation worksheet (now called the *Expedited Settlement Deficiencies Form* or *Deficiencies Form*, see Attachment 2), the *Expedited Settlement Agreement Instructions* (see Attachment 3), and the *Expedited Settlement Agreement* (see

Attachment 4). Additionally, OCE has created a new informational document for site operators, the *Preliminary Inspection Observations* (see Attachment 5).

Each Region has provided my office with its commitment to use the storm water construction ESO as part of its comprehensive storm water compliance and enforcement effort. This revised guidance should replace the previous 2003 guidance as your reference for how to implement an effective and appropriate ESO program for storm water construction violations. We look forward to continuing to work with the Regions in exploring meaningful and effective opportunities to use the ESO for storm water enforcement. For specific questions regarding this memorandum and its attachments, please contact Everett Volk at (202) 564-2828, or Lauren Kabler at (202) 564-4052.

cc: Mark Pollins, Water Enforcement Division
Michael Alushin, Office of Compliance
Linda Boornazian, Office of Wastewater Management
Carol Ann Siciliano, Office of General Counsel
NPDES Regional Enforcement Managers

Attachments

REVISED EXPEDITED SETTLEMENT OFFER FOR STORM WATER (CONSTRUCTION) May 2006¹

Appropriate Use of the ESO

Storm water cases often involve facilities or sites where the cumulative effect of discharges can have significant environmental impact. In storm water cases, issuing timely and consistent enforcement actions is necessary to deter future violations and promote prompt return to compliance. This can be achieved through issuing an expedited settlement offer pursuant to the revisions to the “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*” (*Consolidated Rules*), 40 C.F.R. Part 22. This document provides guidance in implementing Part 22 with respect to certain violations of Clean Water Act storm water regulations for construction activities.

The *Consolidated Rules* provide that, where the parties agree to settle one or more causes of action before the filing of an administrative penalty complaint, a proceeding may be commenced and concluded simultaneously by issuance of a consent agreement and final Clean Water Act section 309(g) penalty order. 40 C.F.R. § 22.13(b).² As formulated in the Expedited Settlement Agreement Offer (ESO) program, this provides “real time” enforcement in situations where violations can be quickly corrected and a penalty collected within a short amount of time, generally a few months from EPA’s discovery of the violation. Under the ESO approach, in specified circumstances, a violator of storm water regulations may resolve its violation through an expedited process in which the violator (1) corrects identified deficiencies, (2) signs an agreement with EPA certifying prompt correction, and (3) pays a penalty.

Violations appropriate for expedited settlements are those that are easily correctable and that may pose some potential harm to human health or the environment, but which do not *result* in significant harm to, or present an imminent and substantial endangerment to, human health or the environment. EPA regions are strongly encouraged to continue targeting for serious violations that result in harm to the environment and human health. However, in those instances where easily correctable violations are discovered that pose some potential harm, the ESO would be an appropriate response mechanism.

The ESO is designed to provide an administratively streamlined approach to resolving violations where a full administrative compliance order (ACO) is not warranted. In requiring a respondent to correct deficiencies, certify to those corrections and pay a penalty, the *Expedited Settlement Agreement* achieves the same ends as an ACO, but in a shorter, more easily administered format. As a result, a separate compliance order requiring corrective action is

¹This version supersedes the “Expedited Settlement Offer (ESO) for Storm Water (Construction)” issued on August 21, 2003.

²An ESO developed under the approach described here is a tool for quickly resolving certain CWA storm water violations. It is not appropriate for use as a penalty demand in an administrative penalty hearing or a judicial trial. Further, whether the Agency decides to use the ESO approach at all is purely within EPA’s discretion.

unnecessary, and regions should generally not issue ACOs at the same time that they issue ESOs.³

Criteria

The criteria below describe when a site should be considered for the ESO program. The purpose of the ESO Criteria is to ensure that ESOs are issued under the appropriate circumstances. Sites that meet all of the following criteria may be eligible for an ESO: (1) sites where the penalty calculated via the ESO *Deficiencies Form* is no more than \$15,000; (2) sites where there is no evidence of significant environmental impact (*e.g.*, turbidity observed in receiving water); (3) sites where the operator is not a repeat violator⁴; and (4) sites where there is no evidence of non-allowable, non-storm water discharges (*e.g.*, industrial process wastewater discharge, such as discharge from a concrete batch plant operation). While there are no site size restrictions on the use of the ESO, generally the bigger the site the greater the potential for significant environmental harm. Therefore, Regions should carefully consider site size prior to using the ESO.

Terminology

Expedited Settlement Deficiencies Form. The *Deficiencies Form* is provided to the regions to calculate a proposed or recommended penalty for the site based on the inspector's findings. The values assigned to each permit requirement in the *Deficiencies Form* reflect the costs the operator would have incurred had the operator obtained and complied with a permit, and a gravity component. Penalties should be based on all deficiencies found at a site, including (1) statutory violations, (2) violations of an NPDES permit, and (3) in the case of facilities without an NPDES permit, deficiencies that would have constituted a violation at a properly permitted facility. In short, the region should consider all deficiencies at a site, whether or not the operator obtained a permit, when calculating a penalty. The *Deficiencies Form* will be incorporated by reference into the *Expedited Settlement Agreement*.

Preliminary Inspection Observations. The *Preliminary Inspection Observations* is an optional form that regions may choose to leave with a site operator at the time of inspection. It provides a simple checklist inspectors may use to highlight their initial observations about potential problems at a site. It is not a formal settlement offer and imposes no obligations on site operators who receive it. However, providing site-specific deficiency information at the time of inspection will afford operators an opportunity to achieve prompt compliance if they so choose.

³If regions believe the joint issuance of an ACO/ESO is necessary to ensure compliance, they must consult with the Water Enforcement Division (WED) on a case-by-case basis prior to issuance.

⁴A repeat violator is any operator who, in the past five years, has been issued a formal enforcement action, or an administrative penalty order (APO), by either EPA or a state for violation of either the multi-sector general permit (MSGP), the construction general permit (CGP), or an individual storm water permit issued by EPA or a state: 1) at the facility where the instant violation occurred; or 2) at two or more facilities, under the ownership, operation, or control of the operator.

Expedited Settlement Agreement. This agreement is a “Consent Agreement and Final Order” pursuant to 40 C.F.R. § 22.

Procedure

This section describes the steps the regions should follow in developing an individual ESO, and finalizing an *Expedited Settlement Agreement*:

1. The inspector targets a site after consulting appropriate storm water targeting guidance and conducts a storm water inspection.
2. The inspector consults the ESO Criteria (and other storm water guidance, including that referenced above) to determine whether the site is eligible for the ESO.
3. If the inspector determines that the site is eligible for the ESO, the inspector completes the *Deficiencies Form* (Attachment 2) and calculates a proposed penalty.
4. Regions should not leave a *Deficiencies Form* at a site after an inspection. Instead, regions can choose to have the inspector leave a *Preliminary Inspection Observations* (Attachment 5) form at the time of the inspection. It is important to note, however, that the *Preliminary Inspection Observations* form is only an informational tool and, if the inspector does leave a copy on site, the Region retains the ability to make a determination as to what type of enforcement action to take, if any, for alleged violations observed during the inspection. Inspectors should receive regional training in the use of this tool so that the inspector can explain the expedited settlement approach to the inspected entity, and, in particular, be able to clearly indicate that the *Preliminary Inspection Observations* form does not reflect EPA decisions regarding violations discovered during inspection and imposes no obligations on the facility/site operator.
5. Regional management reviews the *Deficiencies Form* and finalizes the appropriate penalty. Once the penalty is finalized, an *Expedited Settlement Agreement* (Attachment 4), along with *Expedited Settlement Agreement Instructions* sheet (Attachment 3) and the *Deficiencies Form* (Attachment 2) are mailed to each operator at the site within 21 business days of the inspection.
6. The site representative is given 30 days to return a signed *Expedited Settlement Agreement* and penalty payment to the Region in the manner outlined in the *Expedited Settlement Agreement Instructions*.⁵ If the signed *Expedited Settlement Agreement* is not received within 30 days, it is automatically withdrawn without prejudice to EPA’s ability to institute an enforcement action for noncompliance as identified in the *Deficiencies Form*. Regions have the discretion to extend the offer, for cause, but generally should

⁵Requesting the penalty payment prior to public notice guards against having to file collection actions in the future; however, some regions may choose not to require payment prior to public notice. If this is the case, a region may request that the respondent submit payment within ten days of receiving notice from EPA that the Agreement is effective.

not grant an extension beyond 60 to 90 days after the violator's receipt of the ESO. If the offer is withdrawn, the region should be prepared to escalate its enforcement response by commencing a traditional administrative enforcement proceeding under 40 C.F.R. Part 22.

7. Before issuing an *Expedited Settlement Agreement*, the region must provide public notice and a reasonable opportunity to comment on the proposed issuance of the ESO. See CWA section 309(g)(4)(A). EPA's regulations require that the agency must provide, in the case of settlement by consent agreement and final order, notice no less than 40 days before issuance of an order assessing a penalty. 40 C.F.R. § 22.45(b). We recommend a thirty-day comment period. Regions should consider any public comments received in that period regarding the *Expedited Settlement Agreement*. If, after reviewing the public comments, a region determines that the *Expedited Settlement Agreement* is appropriate (e.g. in the public interest), the region should proceed with issuance. The appropriate delegatee in the region must sign as complainant. 40 C.F.R. § 22.18(b)(2). No sooner than ten days after the close of the recommended comment period, 40 C.F.R. § 22.18(a), an appropriate official at the region (e.g., a Regional Judicial Officer) may sign and ratify the consent agreement. 40 C.F.R. § 22.18(b)(3). No settlement is final without a final order from the Regional Administrator or Regional Judicial Officer ratifying the *Expedited Settlement Agreement*.
8. Regions should file the original signed *Expedited Settlement Agreement* with the Regional Hearing Clerk, mail a copy back to the respondent, and mail a copy to any commenters informing them of their right to file, within 30 days of receipt of their copy of the *Expedited Settlement Agreement*, either a request with the Regional Administrator for a hearing on the penalty pursuant to CWA Section 309(g)(4)(c), or a petition for judicial review to set aside the *Expedited Settlement Agreement* pursuant to CWA Section 309(g)(8) and Part 22. The *Expedited Settlement Agreement* is effective 30 days after signature by the Appropriate Official, unless a request for a hearing on the penalty or a petition to set aside the *Expedited Settlement Agreement* is filed by a commenter. See CWA Section 309(g)(5).
9. Regions should consult the most current Office of Compliance (OC) "Call Memo" for reporting requirements. Pursuant to the discussion above, ESOs should not have accompanying AOs and therefore the only action reported in ICIS should be the ESO. Regions should report the environmental benefits of ESOs in ICIS. Environmental benefits can be calculated by estimating the sediment reduction at construction sites where deficiencies have been corrected pursuant to an ESO. The Storm Water Pollutant Reduction Calculator, which can be obtained from OC's Enforcement Targeting and Data Division or found online at: <http://intranet.epa.gov/oeca/oc/etdd/fy05eoy/wetweathercalculationtools.html>, should be used to estimate sediment reduction.

EXPEDITED SETTLEMENT AGREEMENT INSTRUCTIONS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION [Region]

INSTRUCTIONS

The United States Environmental Protection Agency (EPA) has authority under Section 309 of the Clean Water Act to pursue civil penalties for violations of the storm water regulations. EPA encourages the expedited settlement of certain violations of storm water requirements, such as the violations cited in the Expedited Settlement Agreement (“**Agreement**”) for which these instructions are provided.

You may resolve this matter quickly by: (1) correcting all deficiencies identified by EPA in the *Deficiencies Form*; (2) detailing your corrective actions in a written report; (3) signing the original Agreement; and (4) submitting your penalty payment by check with case name and docket number noted.

[Within THIRTY (30) DAYS from your receipt of the Agreement, you must send the original, signed Agreement, the report detailing your corrective actions, and a photocopy of your penalty check, via certified mail, to:

INSERT - REGION ADDRESS

You must also send a photocopy of the Agreement and your original penalty check with the case name and docket number noted, via certified mail, to:

INSERT- REGION’S PITTSBURGH P.O. BOX ADDRESS]

OR

[Within THIRTY (30) DAYS from your receipt of the Agreement, you must send the original, signed Agreement, which includes a certification that you will submit your penalty payment within TEN (10) days from the date you receive notice from EPA that the Agreement is effective, and the report detailing your corrective actions via certified mail, to:

INSERT- REGION ADDRESS

Within TEN (10) days from the date you receive notice from EPA that the Agreement is effective, you must send your original check with the case name and docket number noted and a copy of the Agreement, via certified mail, to:

INSERT- REGION’S PITTSBURGH P.O. BOX. ADDRESS]

Please retain copies of the signed agreement, the report detailing your corrective actions and the penalty checks for your own records.

You may contact the person listed below and request an extension. EPA will consider whether to grant an extension on a case-by-case basis. If you believe that the alleged violations are without merit (and you can provide evidence contesting the allegations) you must provide such information to EPA as soon as possible but no later than THIRTY

(30) days from your receipt of the Agreement.

If you choose to sign and return the Agreement, you waive your opportunity for a hearing and to appeal pursuant to Section 309 of the Clean Water Act. If you choose not to sign and return the Agreement, or contact EPA, within THIRTY (30) days, the Agreement will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations alleged herein or any other violations. EPA may choose to pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to a maximum penalty of \$32,500 per day per violation. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations.

[Insert Region-specific public notice procedure(s)].

[Insert Region-specific contact instructions].



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region, Address]

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-_____-_____, NPDES No._____

[XXX] ("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 [had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311,] or [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 \$_____. 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 it has submitted 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: INSERT- REGION'S PITTSBURGH P.O. Box No.]

or [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: INSERT - REGION'S PITTSBURGH P.O. BOX.]

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] or [upon filing with the Regional Hearing Clerk.]

APPROVED BY EPA: _____ Date:_____

[Complainant] [Title]

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____ Date: _____

[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 _____

[Appropriate Official] [Title]

Expedited Settlement Offer Worksheet
Deficiencies Form
Consult instructions regarding eligibility criteria and procedures prior to use

version 10.3.4



1	LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number
		Inspector Name:	
		Inspector Agency:	Other
		Entrance Interview Conducted:	
		Exit Interview Conducted:	
	LOCATION AND ADDRESS OF SITE	Exit Interview given to:	
2		Exit Interview time:	Date:

	FACILITY DESCRIPTION / CONTACT NAMES
	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 Currently Disturbed Acres to be Disturbed in Whole Common Plan:
	Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?

	PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficiencies	Dollar Amount	Total
3	Operator unpermitted for _____ months (# months unpermitted equals number of violations)		CWA 301		X	\$500.00 =	
	SWPPP REVIEW						
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)		CGP 3.1.A			\$5,000.00 =	
5	SWPPP prepared but prepared after construction start (# of months = # of violations)		CGP 3.1.A		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			\$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			\$500.00 =	
8	SWPPP does not have site description, as follows:						
	A Nature of activity in description		CGP 3.3.B.1			\$100.00 =	
	B Intended sequence of major activities		CGP 3.3.B.2			\$100.00 =	
	C Total disturbed acreage		CGP 3.3.B.3			\$100.00 =	
	D General location map		CGP 3.3.B.4			\$100.00 =	
	E Site map		CGP 3.3.C			\$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		X	\$50.00 =	
	G Location/description industrial activities, like concrete or asphalt batch plants		CGP 3.3.D			\$500.00 =	
9	SWPPP does not:						
	A Describe all pollution control measures (e.g. BMPs)		CGP 3.4.A			\$750.00 =	

	B	Describe sequence for implementation		CGP 3.4.A			\$250.00	=	
	C	Detail operator(s) responsible for implementation		CGP 3.4.A			\$250.00	=	
10		SWPPP does not describe interim stabilization practices		CGP 3.4.B			\$250.00	=	
11		SWPPP does not describe permanent stabilization practices		CGP 3.4.B			\$250.00	=	
12		SWPPP does not describe a schedule to implement stabilization practices		CGP 3.4.B			\$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		X	\$250.00	=	
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			\$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			\$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			\$500.00	=	
17		SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 3.4.G			\$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			\$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			\$500.00	=	
20		SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 3.5			\$500.00	=	
21		SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 3.5			\$500.00	=	
22		Endangered Species Act documentation is not in SWPPP		CGP 3.7			\$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		X	\$250.00	=	
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			\$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			\$250.00	=	
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			\$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		X	\$50.00	=	
29		Copy of SWPPP not retained on site		CGP 3.12.A			\$500.00	=	
	A	SWPPP not made available upon request		CGP 3.12.C			\$500.00	=	
30		SWPPP not signed/certified		CGP 3.12.D			\$500.00	=	

Subtotal SWPPP Deficiencies

\$0

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			X	\$250.00	=	
	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:	0						=	
	Number of Inspections expected if performed bi-weekly:	0						=	
	If known, number of days of rainfall of >0.5"							=	
32	Inspections not conducted by qualified personnel		CGP 3.10.D				\$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.				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CGP 3.10.E.				\$50.00	=	
35	Discharge locations are not observed and inspected		CGP 3.10.E.				\$50.00	=	
36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 3.10.E.				\$50.00	=	
37	Entrance/exit not inspected for off-site tracking		CGP 3.10.E.				\$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			X	\$50.00	=	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)		CGP 3.10.G			X	\$50.00	=	
Subtotal Inspections Deficiencies									\$0
AVAILABILITY OF RECORDS									
40	Sign/notice not posted		CGP 3.12.B				\$250.00	=	
	A Does not contain copy of complete NOI		CGP 3.12.B				\$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				\$50.00	=	
Subtotal Records Deficiencies									\$0
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				\$500.00	=	
42	Control measures are not properly:							=	
	A Selected, installed and maintained		CGP 3.13.A				\$500.00	=	
	B Maintenance not performed prior to next anticipated storm event		CGP 3.6.B				\$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				\$500.00	=	
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				\$500.00	=	

45	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		CGP 3.13.D			\$500.00	=	
	*Exceptions:							
	(a) Snow or frozen ground conditions							
	(b) Activities will be resumed within 14 days							
	(c) Arid or Semi-arid areas (<20 inches per							
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			\$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			\$1,000.00	=	
	B Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 3.6.C			\$500.00	=	
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			\$500.00	=	
	A Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 3.6.C		X	\$500.00	=	

Subtotal BMP Deficiencies \$0

SMALL BUSINESS EVALUATION

48	Is the Owner/Operator a Small Business?							
	A <i>small business</i> 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: \$0

* Requires Corrective Action

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

Cost of Compliance for Construction based on Acres

Assumption: Start, Inspection and Est. Completion Dates in E25-27 are correct.

0

No. of Acres Disturbed for Common Plan of Development or Sale
- Change # of Acres to a particular Operators acreage to determine their Cost of Complia.

70%

Implementation Efficiency (100% = doing everything, 0% = did nothing)

50%

Paperwork completeness (SWPPP & NOI) (100% = all done right)

Based on 63 FR 7896 & 1.7% annual inflation since 1997

For Acres: \$6382 annual costs for 5 acre site, \$882 in fixed NOI/SWPPP costs

For Case Conclusion Data Sheet: 0.00

\$0 Cost of Physical Actions

\$86 Cost of Non-Physical Actions (SWPPI

\$86 Total Cost of Compliance Saved

Numbers to use for the EPA BEN model:

Capital Investment	\$0	01/00/1900
One-Time, Nondepreciable Expenditure:	\$172	01/00/1900
Annually Recurring:	\$0	01/00/1900
Noncompliance Date:	01/00/1900	
Compliance:	01/30/1900	(Inspection Date + 30 days)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Region, Address]

Preliminary Inspection Observations

This form is provided for informational purposes only and does not reflect EPA decisions regarding violations discovered during inspection. EPA retains the ability to pursue an enforcement action for alleged violations it observes. Operators are not obligated to respond to this form.

PERMIT COVERAGE	
3	Operator unpermitted for _____ months (# months unpermitted equals number of violations)
SWPPP REVIEW	
4	SWPPP not prepared (If no SWPPP, leave elements 5 - 30 blank)
5	SWPPP prepared but prepared after construction start (# of months = # of violations)
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...
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control
8	SWPPP does not have site description, as follows:
A	Nature of activity in description
B	Intended sequence of major activities
C	Total disturbed acreage
D	General location map
E	Site map
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)
G	Location/description industrial activities, like concrete or asphalt batch plants
9	SWPPP does not:
A	Describe all pollution control measures (e.g. BMPs)
B	Describe sequence for implementation
C	Detail operator(s) responsible for implementation
10	SWPPP does not describe interim stabilization practices

11	SWPPP does not describe permanent stabilization practices
12	SWPPP does not describe a schedule to implement stabilization practices
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)
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas
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
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust
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
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
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges
22	Endangered Species Act documentation is not in SWPPP
23	Historic Properties (Reserved)
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)
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)
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates
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)
29	Copy of SWPPP not retained on site
	A SWPPP not made available upon request
30	SWPPP not signed/certified

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).
	No inspections conducted and documented (if True, then leave elements 32-39 blank)
	Number of Inspections expected if performed every 7 days:
	Number of Inspections expected if performed bi-weekly:
	If known, number of days of rainfall of >0.5"
32	Inspections not conducted by qualified personnel
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected
34	All pollution control measures not inspected to ensure proper operation
35	Discharge locations are not observed and inspected
36	For discharge locations that are not accessible, nearby locations are not inspected
37	Entrance/exit not inspected for off-site tracking
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)
39	Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)
AVAILABILITY OF RECORDS	
40	Sign/notice not posted
A	Does not contain copy of complete NOI
B	Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign
BEST MANAGEMENT PRACTICES	
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water
42	Control measures are not properly:

	A	Selected, installed and maintained
	B	Maintenance not performed prior to next anticipated storm event
		(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
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.)
45		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
		*Exceptions:
		(a) Snow or frozen ground conditions
		(b) Activities will be resumed within 14 days
		(c) Arid or Semi-arid areas (<20 inches per year)
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
	A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries
	B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more
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)
	A	Sediment not removed from sediment trap when design capacity reduced by 50% or more
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.