



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2022-0177, NPDES No. IDR10013M

The undersigned representatives of the United States Environmental Protection Agency ("EPA") and Avimor Development, LLC ("Respondent"), enter into the Expedited Settlement Agreement ("Agreement") to resolve Respondent's civil penalty liability for alleged violations of the National Pollutant Discharge Elimination System stormwater permit ("Permit") at the facility located at 18454 North McLeod Way, Boise, Idaho ("Site").

Respondent had an unauthorized discharge of storm water from the Site in violation of Section 301(a) of the Clean Water Act ("Act"), 33 U.S.C. § 1311(a), and/or failed to comply with its Permit for the Site issued under Section 402 of the Act, 33 U.S.C. § 1342. Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5). Respondent is responsible for the alleged violations specified in the attached Expedited Settlement Offer (ESO) Worksheet – Findings and Alleged Violations ("Form"). The Form is incorporated into this Agreement by reference.

EPA finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22. Respondent neither admits nor denies the violations alleged in the Form.

Respondent agrees to pay a civil penalty of \$5,280. Respondent waives the rights to: (1) contest the allegations in the Form; and (2) to appeal any final order an EPA Regional Judicial Officer may issue to ratify this Agreement ("Final Order"). Proof of payment of the civil penalty must accompany this signed copy of the Expedited Settlement Agreement when it is returned to EPA.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Form have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; (2) consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes; and (3) Respondent, in accordance with the attached Payment Instructions, has provided proof of payment of the civil penalty, with case name and docket number noted.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of the Permit and/or Section 301(a) of the Act as alleged in the Form. This Agreement does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order for any

uncorrected violations listed in the Form. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulations, order, or permit issued pursuant to the Act.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on it. EPA will address any comments on the Agreement in accordance with Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

Attachments:

- 1. ESO Worksheet – Findings and Alleged Violations
2. Payment Instructions

APPROVED BY EPA:

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division

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:

Richard Mednick
Regional Judicial Officer, Region 10



FINDINGS and ALLEGED VIOLATIONS

Expedited Settlement Offer Worksheet

Consult instructions regarding eligibility criteria and procedures prior to use

version: June 2019

		LEGAL NAME AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number			
1		Operator 1		Operator 2:			
		Avimor Development, LLC		IDR10013M			
		Brad Pfannmuller, General Manager	Inspector Name:	Daniel Hermes			
		18454 North McLeod Way	Inspector Agency:	IDEQ			
		Boise, Idaho 83714	Entrance Interview Conducted:		Yes		
			Exit Interview Conducted:		Yes		
		LOCATION AND ADDRESS OF SITE	Exit Interview given to:	B. Pfannmuller, L, Butler & R Juarez			
2		Avimor Village I	Exit Interview time:	12:30 PM	Date:	01/29/2021	
		18454 North McLeod Way					
		Boise, Idaho 83714					
		FACILITY DESCRIPTION / CONTACT NAMES					
3		Name of Site Contact (ESO Worksheet recipient):	Brad Pfannmuller				
		Name of Authorized Official (40 CFR 122.22):	Brad Pfannmuller				
		Inspection Date:	01/29/2021				
		Start Construction Date:	05/01/2018				
		Estimated Completion Construction Date:					
		If Unpermitted, Number of Months Unpermitted:					
		Name of Receiving Water Body (Indicate whether 303(d) listed):	Spring Valley Creek				
		Acres Disturbed Acres for Whole Common Plan:	944.00	944.00			
		Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?					

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
PERMIT COVERAGE									
4		Operator discharged stormwater without a permit on one or more days during _____ months (# of months with an unauthorized discharge equals number of violations)		CWA 301			X	\$600	\$0
USE OF CATIONIC TREATMENT CHEMICALS (WHERE									
5		Proper notice was not provided for use of cationic treatment chemicals prior to submittal of the NOI. NOTE that this applies only to the failure to provide notice in the absence of a discharge to a storm drain or water.		1.1.9				\$300	\$0
POST NOTICE OF PERMIT COVERAGE									
6	A	Sign/notice not posted as required. (If no sign/notice posted, leave element B blank.)		1.5				\$300	\$0
	B	Sign/Notice was missing one or more elements required by the Permit. (Count each omission under B as one violation.)		1.5.a-d			X	\$60	\$0
SWPPP REVIEW									
7		No SWPPP prepared at time of inspection. (If no SWPPP, leave elements 8 - 21 blank)		7.1				\$6,000	\$0
8		SWPPP prepared after construction start (# of months = # of violations with a maximum penalty of \$6,000). NOTE that elements 9 - 21 only apply to the months when the operator had a SWPPP. The maximum penalty for all SWPPP violations is \$6,000.		7.1			X	\$1,000	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
9	A	SWPPP does not list all operators for the project site and the areas of the site over which each operator has control.		7.2.1				\$600	\$0
	B	SWPPP does not identify stormwater team and respective responsibilities.		7.2.2				\$300	\$0
10		SWPPP does not include:							
	A	Description of the nature of construction activities.		7.2.3.a				\$120	\$0
	B	The size of the property; the total area expected to be disturbed by the construction activities; the maximum area expected to be disturbed at any one time including onsite and offsite construction support activity areas.		7.2.3 b, c, e				\$120	\$0
	C	A description of any onsite/offsite construction support activities.		7.2.3.d				\$600	\$0
	D	A description and projected schedule for each portion of the site that includes all elements/dates required by the Permit. (Count each omitted category as one violation.)		7.2.3.f			X	\$300	\$0
	E	A list and description of all pollutant-generating activities.		7.2.3.g				\$300	\$0
	F	Public Emergencies: Required information for public emergency situations. NOTE that operator has 30 days to complete SWPPP after commencing construction.		7.2.3.i & 1.4				\$300	\$0
11		Site Map							

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
	A	Site map not included in SWPPP.	7.2.4				\$600	\$0	
	B	Site map does not include all elements required by the Permit. (Count each omission as one violation up to \$600.)	Report from the 1/29/21 inspection documents that the SWPPP site map does not include 1) stockpiles located on-site and 2) the prescribed combination of natural buffer and other dissipation devices (2 counts).	7.2.4.a-j		2	X	\$60	\$120
12		SWPPP does not:							
	A	Identify all authorized non-storm water discharges that will or may occur.	7.2.5				\$600	\$0	
	B	Describe the specific controls to be implemented to meet the effluent limits for erosion and sediment controls. (Count one violation for each missing control measure up to a maximum of \$900.)	7.2.6., 2.2				\$300	\$0	
		For each specific erosion and sediment control identified in the SWPPP, include all information required by the Permit. (Count 1 violation for each control with incomplete information.)	7.2.6				X	\$100	\$0
	C	Describe the specific controls to be implemented to meet the effluent limits for pollution prevention. (Count one violation for each missing control measure up to a maximum of \$900.)	7.2.6, 2.3				x	\$300	\$0
		For each specific pollution prevention control measure identified in the SWPPP, include all information required by the Permit. (Count each control with incomplete information as 1 violation.)	7.2.6				X	\$100	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
	D	Describe the specific controls to be implemented to meet the effluent limits for construction dewatering.	7.2.6, 2.4			X	\$300	\$0
		For each specific dewatering control measure identified in the SWPPP, include all information required by the Permit. (Count each control with incomplete information as 1 violation.)	7.2.6					
	E	Document for sites affected by unforeseen circumstances that delay initiation and/or completion of Vegetative Stabilization: the circumstances and the schedule for initiating and completing stabilization.	7.2.6.b.vi (d); 2.2.14				\$300	\$0
13	A	SWPPP does not describe the procedures for Inspection, Maintenance and Corrective Action.	7.2.7; 2.1.4; 4; 5				\$600	\$0
	B	Description of Inspection, Maintenance and Corrective Action procedures does not include all information required by the Permit. (Count each applicable omission as one violation.)	7.2.7.a-d			X	\$120	\$0
14		SWPPP does not include documentation that required personnel were, or will be, trained in accordance with Permit requirements.	7.2.8; 6				\$300	\$0
15		Threatened and Endangered Species Act documentation is not included in SWPPP.	7.2.9.a				\$600	\$0
16		Historic Properties documentation is not included in SWPPP.	7.2.9.b				\$600	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
17		SWPPP does not document contacts, where applicable, with UIC regulatory authority regarding compliance with SDWA UIC Requirements for Certain Subsurface Stormwater Controls.		7.2.9.c				\$600	\$0
18		SWPPP not signed/dated/certified.		7.2.10				\$600	\$0
19		Copy of NOI and relevant correspondence, acknowledgement letter received from NeT, or Permit (can be electronic) not included as part of SWPPP. (Count each omission as one violation.)		7.2.11 a- c			X	\$300	\$0
20		Copy of SWPPP is not retained on site or otherwise easily accessible.		7.3				\$600	\$0
21	A	SWPPP (including site map) has not been updated/modified as required by the Permit. (Count each omission as one violation.)	Report from the 1/29/21 inspection states that operator told inspector that silt fence was removed to begin landscaping near the unofficial construction exit close to the southern boundary of Phase 12 (near Elk Trail Street) but did not update the SWPPP.	7.4.1		1	X	\$60	\$60
	B	SWPPP modifications do not meet record keeping, approval or notification requirements. (Count each omission as 1 violation.)		7.4.2; 7.4.3; 7.4.4			X	\$60	\$0
INSPECTIONS									
22	A	Number of Inspections required if performed every 7 days:							
	B	Number of Inspections required if performed every 14 days:							

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
	C	If known, and if applicable, number of days of rainfall of > 0.25" :							
	D	Number of inspections required under a reduced frequency							
	E	TOTAL number of required inspections							
	F	TOTAL number of inspections conducted/documented							
23	A	All required inspections were not conducted and timely documented. (If NO inspections were conducted and documented, then leave elements 24-28 blank)			TRUE		True or False		
	B	Inspections not performed and timely documented. (Count each failure to inspect and document as one violation.)	Report from the 1/29/21 inspection states that operator failed to perform/document self-inspections following 14 qualifying storm events to Spring Valley Creek, a Tier 2 waterbody. Subsequent correspondence from the IDEQ inspector identifies the following dates of missed self-inspections: 9/8/19, 12/12/19, 1/26/20, 2/16/20, 3/15/20, 4/23/20, 4/30/20, 5/14/20, 6/7/20, 6/13/20, 10/10/20, 11/13/20, 11/15/20, 12/26/20.	4.2 - 4.4; 4.7.1	14	X	\$300	\$4,200	
24		Inspections not conducted by qualified personnel. (Count each inspection conducted without qualified personnel as one violation.)		4.1			X	\$60	\$0
25		Areas to be inspected: Failed to inspect all required areas as identified in the Permit. (Count each omission as one violation.)		4.5; 4.6.1			X	\$60	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
26		Site inspection report does not include all information required by the Permit. (Count each omission as one violation.)		4.6.6, 4.7.1.a -e		X	\$60	\$0
27	A	Inspection reports not properly signed/certified. (Count each failure to sign/certify as one violation.)		4.7.2		X	\$60	\$0
	B	Copies of inspection reports have not been retained onsite or at easily accessible location.		4.7.3; 4.7.4			\$600	\$0
BEST MANAGEMENT PRACTICES								
28		General Maintenance Requirements:						
	A	Failure to ensure that all stormwater controls are maintained and remain in effective operating condition (i.e., all routine maintenance and corrective actions are performed within the timeframes required by the Permit). (Count each failure to timely maintain each control as one violation.)	Report from 1/29/21 inspection describes operator's failure to maintain a 50 foot natural buffer or equivalent along the barn and near the bridge. Operator stated disturbed BMPs near barn were disturbed and corrected the day of the inspection. Operator failed to maintain BMPs near bridge (1 count).	2.1.4; 2.2; 5.2		1	\$300	\$300
	B	Failure to complete a Corrective Action report when required in accordance with Permit requirements. (Count each missing/deficient report as 1 violation.)		5.4.1, 5.4.2, 5.4.4		X	\$300	\$0
	C	Corrective Action Reports not properly signed. (Count each failure to sign as one violation.)		5.4.3		X	\$60	\$0
		Control measures are not properly selected, installed or maintained:						

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
29		Failure to provide a 50-ft undisturbed natural buffer or equivalent erosion and sediment control when a water of the US is located within 50 feet of the site's earth disturbances. (Count each failure as one violation.)		2.2.1			X	\$600	\$0
30		Failure to direct stormwater to vegetated areas to maximize infiltration and filtering (unless infeasible). (Count each failure as one violation.)		2.2.2			X	\$600	\$0
31		Failure to install sediment controls along all perimeter areas of the site that will receive pollutant discharges (or, for linear construction sites where such controls are infeasible, to implement other appropriate practices). (Count each failure as one violation.)							
	A	If Common Drainage is 10+ acres		2.2.3			X	\$1,200	\$0
	B	If Common Drainage is less than 10 acres	Report from 1/29/21 inspection documented discharges from stockpile(s) near an unofficial exit. The area lacked perimeter controls. Operator stated the Common Drainage in that area of construction site is less than 10 acres.	2.2.3		1	X	\$600	\$600
32		Failure to minimize sediment trackout in accordance with Permit requirements. (Count each failure as one violation.)	Report from 1/29/21 inspection documented trackout onto sidewalks and streets. Operator stated trackout was addressed the day of the inspection. No counts.	2.2.4.a-c			X	\$600	\$0
33		Failure to properly manage stockpiles or land clearing debris piles composed of sediment and/or soil. (Count each failure as one violation.)		2.2.5.a-d			X	\$600	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
34		Failure to minimize dust through appropriate application of water or other dust suppression techniques. (Count each failure as one violation.)		2.2.6			X	\$600	\$0
35		Failure to minimize disturbances of "steep slopes". (Count each failure as one violation.)		2.2.7			X	\$600	\$0
36		Failure to preserve native topsoil (unless infeasible). (Count each failure as one violation.)		2.2.8			X	\$600	\$0
37		Failure to minimize soil compaction in areas where final vegetative stabilization will occur or where infiltration practices will be installed. (Count each failure as one violation.)		2.2.9			X	\$600	\$0
38		Failure to protect storm drain inlets by installing inlet protection measures that remove sediment from discharges prior to entry into a storm drain inlet. (Count each failure as one violation.)		2.2.10.a			X	\$600	\$0
39		Failure to use erosion controls and velocity dissipation devices within and along the length of any stormwater conveyance channel and at any outlet to slow down runoff to minimize erosion. (Count each failure as one violation.)		2.2.11			X	\$600	\$0
40		Failure to properly design or locate sediment basin or similar impoundment in accordance with Permit requirements. (Count each failure as one violation.)		2.2.12.a-e			X	\$1,200	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
41		Failure to comply with Permit requirements for use of treatment chemicals.- (Count each failure as one violation.)		2.2.13.a-f			X	\$200	\$0
42		Failure to initiate and complete stabilization measures within the deadlines required by the Permit. (Count each failure as one violation.)		2.2.14.a			X	\$600	\$0
43		Final Stabilization Criteria not achieved as required.		2.2.14.b				\$1,200	\$0
44		Other needed control measures not properly selected or installed. (Each omission is 1 violation.)		2.1			X	\$600	\$0
		Pollution Prevention Requirements							
45		Failure to provide effective controls for equipment and vehicle fueling and maintenance activities. (Count each failure as one violation.)	Report from the 1/29/21 inspection documents oil sheen on surface water and three above ground storage tanks. Operator stated that the construction site did not have a SPCC Plan (required if total oil storage capacity exceeds 1,320 gallons threshold). Operator stated the following: 1) tanks were an artifact from the farm operation that predated current construction, 2) current operator did not dispense petroleum in the vicinity of the tanks and 3) operator removed tanks and proximate contaminated soil. Inspection report did not provide information on the total oil storage capacity. No counts.	2.3.1.a-f			X	\$600	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
46			Failure to effectively minimize the discharge of pollutants from equipment and vehicle washing. (Count each failure as one violation.) NOTE that discharges of soaps, solvents or detergents to a storm drain or receiving water are not eligible for an ESA.	1.2.2; 2.3.2.a-c			X	\$600	\$0
47			Failure to implement appropriate controls to prevent/minimize the discharge of pollutants from any of the following: building materials/products; landscaping chemicals and materials; petroleum products and other chemicals; hazardous and toxic waste; construction and domestic wastes; and/or sanitary wastes. (Count each failure as one violation.) NOTE that any nonallowable, non-stormwater discharges to a storm drain or receiving water are not eligible for an ESA.	2.3.3.a-f			X	\$600	\$0
48			Failure to provide effective controls for concrete washout. NOTE that nonallowable, non-stormwater discharges to a storm drain or water are not eligible for an ESA.	2.3.4.a-c				\$1,000	
49			Failure to provide effective controls for washing applicators/containers for stucco, paint, form release oils, curing compounds or other materials. (Count each failure as one violation.) NOTE that nonallowable, non-stormwater discharges to a storm drain or receiving water are not eligible for an ESA.	2.3.4.a-c			X	\$600	\$0
50			Failure to comply with requirements for application of fertilizers.	2.3.5.a-f				\$600	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
51		Failure to comply with Permit requirements for construction dewatering in order to minimize the discharge of pollutants. (Count each failure as 1 violation.) Use of waters of the US as part of the treatment area is not eligible for an ESA.	2.4			X	\$600	\$0	
SMALL BUSINESS EVALUATION									
52		Is the Owner/Operator a Small Business?					Yes or No		
		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:								\$5,280	
ADJUSTMENT FOR A REPEAT VIOLATOR:									
53		Repeat Violator: To adjust the settlement amount for Repeat Violators, multiple the Total Expedited Settlement Amount by the appropriate Escalation Factor. To do that, enter either 0.25 or 0.5 into Column G, as appropriate. <u>If this is not a Repeat Violator, leave this row blank.</u>	Adjustment for Repeat Violator:			X	\$5,280	\$0	
FINAL TOTAL EXPEDITED SETTLEMENT FOR REPEAT VIOLATOR:								\$0	

*RCA: Requires Corrective Action