



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2022-0266, NPDES No. IDR1002CM, "Unpermitted", "Unpermitted"

The undersigned representatives of the United States Environmental Protection Agency ("EPA") and M3 ID Rising Sun, LLC, Conger Management Group, Inc., and Syman, LLC ("Respondents"), enter into the Expedited Settlement Agreement ("Agreement") to resolve Respondents' civil penalty liability for alleged violations of the National Pollutant Discharge Elimination System stormwater permit ("Permit") at the facility located on Kuna Road in Kuna, Idaho ("Site").

Respondents had unauthorized discharges 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 their 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). The Respondents are 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 Respondents admit, 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. Respondents neither admit nor deny the violations alleged in the Form.

Respondents agree to pay a civil penalty of \$15,240. Respondents waive 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, Respondents certify that: (1) the alleged violations listed in the Form have been corrected, and Respondents have 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), Respondents will not deduct penalties paid under this Agreement for federal tax purposes; and (3) Respondents, in accordance with the attached Payment Instructions, have 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 Respondents' 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 Respondents 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):

Date:
Signature

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:
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(s) AND MAILING ADDRESS(ES)	TELEPHONE NUMBER(s)	NPDES Permit Number			
1	<b>Operator 1</b>		IDR1002CM, unpermitted, unpermitted			
	Mark Tate, Project Manager	208-631-2025				
	M3 ID Rising Sun, LLC		<b>Inspection Information</b>			
	4087 W. River St., Ste 310		Inspector Agency:	EPA		
	Boise, ID 83702		Entrance Interview Conducted:	<input type="checkbox"/>	Yes	<input type="checkbox"/>
			Exit Interview Conducted:	<input type="checkbox"/>	Yes	<input type="checkbox"/>
	<b>Operator 2:</b>		Exit Interview given to:	Dan Strauss, Colter Hodge, Steve Sears		
	James Conger, Owner	208-336-5355	Exit Interview time:	10:20 AM	Date:	02/23/2021
	Conger Management Group, Inc.					
	4824 W Fairview Ave.		Inspector Name:	Steven Chase and Kelly Davis and Charissa Bujak		
	Boise, ID 83702					
	<b>Operator 3:</b>					
	Kay Lyman, Owner	208-287-8420				
	Syman, LLC					
	2101 Delta Drive					
	Nampa, ID 83654					
	<b>LOCATION AND ADDRESS OF SITE</b>					
2	Rising Sun Subdivision					
	2067 E. Kuna Rd.					
	Kuna, ID 83634					
	<b>FACILITY DESCRIPTION / CONTACT NAMES</b>					
3	Name of Site Contact (ESO Worksheet recipient):		Mark Tate, James Conger, Dan Strauss			
	Name of Authorized Official (40 CFR 122.22):		William Brownlee, Jim Conger, Kay Lyman			
	Inspection Date:		02/23/2021			
	Start Construction Date:		03/15/2020			
	Estimated Completion Construction Date:		10/31/2024			
	If Unpermitted, Number of Months Unpermitted:		12 (9 months of discharge/precipitation > 0.25")			
	Name of Receiving Water Body (Indicate whether 303(d) listed):		Indian Creek, New York Canal, Unnamed Waterway			
	Acres Disturbed   Acres for Whole Common Plan:		45.50			
	Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?		No			

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
<b>PERMIT COVERAGE</b>								
4	Operator discharged stormwater without a permit on one or more days during _____ months (# of months with an unauthorized discharge equals number of violations)	Construction began on 3/15/20. At the time of the 2/23/21 compliance evaluation inspection (CEI), Conger Management Group, Inc. & Syman, LLC were not covered by the CGP (supported by information request documentation). Aligning with permit inspection frequency requirements for rain events, precipitation events > 0.25" was used as a surrogate to determine discharges. Discharges/precipitation events > 0.25" occurred during the following months: March 2020 (0.58" on 3/15, 0.28" on 3/17, 0.44" on 3/31), April 2020 (0.37" on 4/23, 0.42" on 4/30), May 2020 (0.36" on 5/14, 0.35" on 5/19, 0.80" on 5/20), June 2020 (0.85" on 6/7, 1.21" on 6/13, 0.26" on 6/16), October 2020 (0.42" on 10/10), November 2020 (0.45" on 11/13, 0.46" on 11/15, 0.33" on 11/18), December 2020 (0.34" on 12/26), January 2021 (0.28" on 1/29), February 2021 (0.29" on 2/12, 0.52" on 2/13, 0.30" on 2/15); 9 months of unpermitted discharges between start of construction and CEI X 2 unpermitted operators = 18 counts	CWA 301		18	X	\$600	\$10,800
<b>USE OF CATIONIC TREATMENT CHEMICALS (WHERE</b>								
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
<b>POST NOTICE OF PERMIT COVERAGE</b>								
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
<b>SWPPP REVIEW</b>								
7	No SWPPP prepared at time of inspection. (If no SWPPP, leave elements 8 - 21 blank)		7.1				\$6,000	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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
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

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
	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						
	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.)	7.2.4.a-j		3	X	\$60	\$180
12		SWPPP does not:						
	A	Identify all authorized non-storm water discharges that will or may occur.	7.2.5				\$600	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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
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

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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
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.)		7.4.1			X	\$60	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
	B	SWPPP modifications do not meet record keeping, approval or notification requirements. (Count each omission as 1 violation.)	7.4.3: "All modifications made to the SWPPP consistent with Part 7.4 must be authorized by a person identified in Appendix I, Part I.11.b." At time of inspection, Appendix J of SWPPP "Delegation of Authority" was not signed. CGP requires that a signed and dated written authorization naming a duly authorized representative be included in the SWPPP - CGP Section I.11.2.3. (1 count)	7.4.2; 7.4.3; 7.4.4		1	X	\$60	\$60
<b>INSPECTIONS</b>									
22	A	Number of Inspections required if performed every 7 days:							
	B	Number of Inspections required if performed every 14 days:							
	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	<b>TOTAL number of inspections conducted/documentd</b>							
23	A	All required inspections were not conducted and timely documented. <b>(If NO inspections were conducted and documented, then leave elements 24-28 blank)</b>	TRUE					True or False	
	B	Inspections not performed and timely documented. (Count each failure to inspect and document as one violation.)	Permittee missed 1 inspection that was required to be performed within 24 hours of qualifying rain/storm event based on review of Attachment C of inspection report. According to NOAA weather data from Boise International Airport station, there was a rain event of more than 0.25" on 1/29/21 (Friday). Inspection would have been expected to be conducted by the following Monday, 2/1/21, for the 1/29/21 rain event. (1 count)	4.2 - 4.4; 4.7.1		1	X	\$300	\$300
24		Inspections not conducted by qualified personnel. (Count each inspection conducted without qualified personnel as one violation.)		4.1			X	\$60	\$0



		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
25		<b>Areas to be inspected:</b> 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	
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	
<b>BEST MANAGEMENT PRACTICES</b>									
28		<b>General Maintenance Requirements:</b>							
	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.)	EPA observed three conditions (per permittee inspection reports) that needed corrective actions, which were not completed by the close of the next business day following the observation (required by part 5.2.2 of the Permit) or installed within seven calendar days (required by part 5.2.3 of the Permit). EPA observed three locations on the silt fence along the Site's southern perimeter that required maintenance and/or replacement due to deterioration and collapse (Photographs 8, 9, and 10 in inspection report) (Permit Part 2.1.4 and Permittee's SWPPP Part 4.2). (3 counts)	2.1.4; 2.2; 5.2		3	X	\$300	\$900
	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
		<b>Control measures are not properly selected, installed or maintained:</b>							

		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.)	Per permittee's SWPPP Part 4.4 -EPA observed a location that lacked perimeter control downgradient of an unstabilized stockpile of soil and gravel on the southwestern perimeter of the Site, adjacent to North Indian Creek. (Photographs 4 and 5 in inspection report shows gap in perimeter control). During 6/14/22 meeting, M3 indicated perimeter control was present but a portion of it was buried and not visible. The permit requires that perimeter controls be fully functional (Count 1). Inspectors also observed a location on the silt fence along the southern perimeter where sediment had accumulated to approximately one-half of the above-ground height of the silt fence (Photograph 7 in inspection report). Permit does not distinguish between accumulation methods. (Count 2). Additionally, inspectors observed a lack of perimeter controls on the western, eastern, and northern perimeters of the Site (Exhibit B-2 on inspection report - site map indicated perimeter controls/silt fencing not needed on northern and eastern perimeters of site because these areas do not receive pollutant discharges-everything flows downgradient to southern perimeter. However, site map (Exhibit B-2) did not annotate perimeter control not needed on Site's western perimeter. (Count 3)					
	A	If Common Drainage is 10+ acres	See above	2.2.3		X	\$1,200	\$0
	B	If Common Drainage is less than 10 acres	See above	2.2.3	3	X	\$600	\$1,800
32		Failure to minimize sediment track out in accordance with Permit requirements. (Count each failure as one violation.)	2.2.4.a-c			X	\$600	\$0

		<b>Findings</b>	<b>CGP Citation</b>	<b>RCA*</b>	<b>No. of Deficiencies</b>		<b>Penalty Amount</b>	<b>Total</b>
33	Failure to properly manage stockpiles or land clearing debris piles composed of sediment and/or soil. (Count each failure as one violation.)	EPA observed eight locations of unstabilized stockpiles of soil, gravel, and rock– two locations at the north-central area of the Site (Photograph 1 of inspection report), four locations at the center of the Site (Photograph 2 of inspection report), one location at the south-central area of the Site (Photograph 3 of inspection report), and one location at the southwestern perimeter of the Site (No photograph, but southern perimeter had perimeter controls). Per meeting with M3 on 6/14/22, 8 stockpile locations to only count as 1 violation per "area" of stockpile movement - dirt piles that move a lot from active mass excavation activity on site but could have still benefited from controls (2 counts - Photographs 2 and 3).	2.2.5.a-d		2	X	\$600	\$1,200
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

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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
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
	<b>Pollution Prevention Requirements</b>							
45	Failure to provide effective controls for equipment and vehicle fueling and maintenance activities. (Count each failure as one violation.)		2.3.1.a-f			X	\$600	\$0
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

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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
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
<b>SMALL BUSINESS EVALUATION</b>								
52	Is the Owner/Operator a Small Business?	Yes for all three parties per D-U-N-S reports				Yes	Yes or No	

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
		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.			Yes			
<b>TOTAL EXPEDITED SETTLEMENT:</b>							<b>\$15,240</b>	
<b>ADJUSTMENT FOR A REPEAT VIOLATOR:</b>								
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	\$15,240	\$0
<b>FINAL TOTAL EXPEDITED SETTLEMENT FOR REPEAT VIOLATOR:</b>							<b>\$0</b>	

\*RCA: Requires Corrective Action