



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

SEP 04 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Expedited Settlement Agreement Program Pilot for Construction Stormwater

FROM: Rosemarie Kelley, Director
Office of Civil Enforcement 

TO: Enforcement and Compliance Assurance Division Directors, Regions 1 - 10
Regional Counsels, Regions 1 - 10

This memorandum transmits the revised Construction Stormwater Expedited Settlement Agreement (ESA) Program Pilot which modifies the ESA Program issued in May 2006. The most significant revisions address the ESA eligibility criteria, expanding the universe of construction sites potentially eligible for an ESA. We also revised the procedures for issuing an ESA and updated the penalty worksheet to reflect EPA's current Construction General Permit (CGP) and to adjust for inflation since May 2006. Due to the significance of these modifications, we are issuing this revised ESA Program as a 30-month pilot so that the regions and the Office of Civil Enforcement's (OCE) Water Enforcement Division can apply and evaluate the changes prior to issuing the final version. This revised ESA Program Pilot is consistent with the Revised Guidance on the Use of Expedited Settlement Agreements issued by the Assistant Administrator for the Office of Enforcement and Compliance Assurance on November 24, 2014 (2014 ESA Guidance).

The Construction Stormwater ESA Program promotes compliance with National Pollutant Discharge Elimination System (NPDES) stormwater requirements at construction sites by providing a "real time" expedited enforcement mechanism in situations where environmental harm is potentially less significant and violations can be quickly corrected. The ESA Program is intended to compel faster compliance at more construction sites to limit future environmental impacts, thereby allowing the Agency to maintain a larger enforcement presence within a very large regulated universe and allowing the Agency to focus more of its resources on cases that have the most significant impact on human health and the environment.

The following documents, which are attached to this memorandum, provide the framework and guidance for the revised ESA Program Pilot and supersede the documents issued on May 19, 2006:

- *Guidance for the Revised Construction Stormwater Expedited Settlement Agreement Program, Pilot – September 2019*, which describes the eligibility criteria and the procedures for developing and issuing an ESA;
- *The Expedited Settlement Offer Worksheet – Findings and Alleged Violations* (Expedited Settlement Offer Worksheet), which is used to calculate an appropriate penalty for an ESA offer;

- A model ESA form;
- Model ESA payment instructions to be provided to the site operator along with the ESA offer; and
- An example cover letter for transmitting the ESA offer to a site operator.

The regions can modify the model ESA form, model ESA payment instructions and example cover letter to reflect a region's specific procedures for issuing ESAs, provided those procedures are consistent with the 2014 ESA Guidance. For example, the 2014 ESA Guidance discusses two alternative approaches for payment of the penalty, i.e., a region may require payment before the signed ESA is returned to the Agency by the respondent or after the ESA is final.

Modifications to the Construction Stormwater ESA Program

We have revised the ESA Program's penalty cap, eligibility criteria, scope and procedures. These modifications are based on the regions' experience with the ESA Program since it was first issued in 2003. We did not change the types of violations that can potentially be covered by an ESA, which include all violations of an EPA or a state-issued GCP, as well as the unauthorized discharge of stormwater from construction sites, provided the violations, the site and the operator meet specified criteria. As noted above, the modifications will expand the universe of construction sites potentially eligible for an ESA. The modifications include:

(1) Increasing the ESA penalty cap from \$15,000 (\$18,000 when adjusted for inflation) to \$54,000. The new \$54,000 cap approximates the Class I administrative penalty cap as adjusted for inflation in 2019.¹ The higher cap will provide regions with more flexibility to use an ESA in situations where the penalty calculated by the Expedited Settlement Offer Worksheet is significantly higher than the current cap of \$15,000 but an ESA still seems appropriate considering the size and sophistication of the violator and the overall site conditions, including no evidence of environmental harm. The higher cap also allows the regions more flexibility in dealing with Repeat Violators (discussed below). This significant increase from the previous cap was informed by over a decade of experience using the 2006 ESA Program. Increasing the cap results in an expansion of the universe of sites potentially eligible for an ESA. This change will result in an even greater EPA presence in a large and constantly changing universe where many of the regulated entities are small, less sophisticated operators.

Increasing the cap allows for the following benefits:

- Faster resolution of violations at more sites. Timely resolution of violations at construction sites is important given the relatively short life-span of a construction site and the goal to correct violations before new rain events, in order to prevent potential future environmental impacts that could otherwise occur.
- More sites will be covered by the ESA universe, including sites associated with Repeat Violators, reserving more resources for more significant issues while still allowing a larger EPA presence.
- Increased awareness of the potential for EPA inspection and enforcement among a larger universe of operators while allowing reduced penalties for smaller, less sophisticated operators.

¹ See 84 Fed. Reg. 2056, 2060 (February 6, 2019).

(2) Providing more flexibility for Repeat Violators. For the purpose of this ESA, a Repeat Violator is an operator of a construction site who was issued a formal enforcement action for stormwater violations in the last five years.² This includes formal enforcement actions with or without penalties for violations of a CGP; a Multi-Sector General Permit (MSGP); a Municipal Separate Storm Sewer System Permit (MS4 permit) where the permit violation relates to construction undertaken by the permittee; or an individual stormwater permit. Prior formal enforcement actions also include both EPA and state actions against the same operator whether at the same or different construction sites.

The revised ESA Program allows ESAs to be issued to Repeat Violators provided the cumulative penalty amount over the last five years, including the penalty amount in the proposed ESA, does not exceed the ESA cap of \$54,000. As a result, ESAs can be used to address a larger universe of violators, provided all other ESA criteria are met (e.g., no evidence of significant environmental harm, violations can be quickly corrected). This seems especially appropriate for the smaller, less sophisticated operators who make up a large part of the regulated universe.

When assessing a penalty for a Repeat Violator, regions should apply an escalation factor to the penalty amount calculated using the Expedited Settlement Offer Worksheet. Regions should apply a 25% escalation factor to the ESA penalty if it is the second formal enforcement action issued over the previous five years, and a 50% escalation factor if it is the third or more formal enforcement action issued over the previous five years.

EPA can issue multiple concurrent ESAs to an operator for violations at multiple sites. In this situation, the cumulative penalty cannot exceed \$54,000, however, regions would not apply an escalation factor since the ESAs would be issued concurrently.³ This allows EPA to address violations by the same operator at multiple sites when the violations are not sufficiently egregious to warrant a traditional penalty action.

This modification to the construction stormwater ESA Program is consistent with the 2014 ESA Guidance, which lifted the prohibition on the use of ESAs to remedy violations of Repeat Violators. As described above, the modification does not authorize unlimited issuance of ESAs to Repeat Violators but establishes parameters for when an ESA is appropriate for a Repeat Violator. These parameters reflect the very large universe of regulated entities, the fact that many members of the universe are small, less sophisticated companies that often have high staff turnover, and the goal of compelling a faster return to compliance.

(3) Allowing more time between the inspection and issuance of an ESA offer when necessary. The revised ESA Program Pilot extends the allowable time between an ESA offer and the inspection or the Agency's receipt of a response to a Clean Water Act §308 request or other compliance information, whichever is applicable. The timeframe is extended from 21 business days under the 2006 ESA Program, to a maximum of 60 calendar days under this revised ESA Program Pilot. This longer time period allows regional staff more time, when needed, to follow-up on any potential issues, such as whether waters of the United States are involved. Issuance of an ESA offer within 21 business days is the Agency's goal when possible since an underlying assumption of an ESA program is the expeditious

² For this ESA, formal enforcement actions include Administrative Penalty Orders, as well as Administrative Orders, Consent Agreement and Final Orders, Administrative Orders on Consent, etc.

³ Concurrent means that the ESA offers were issued in response to inspections that were conducted for all the sites, or compliance information that was received for all the sites, within a short time frame, and the ESA offers were therefore all issued within a short time frame.

correction of deficiencies, but the regions' experience is that the 21-day goal is not always achievable. The 60-day deadline is consistent with the Agency's overall goal of issuing inspection reports within 60 calendar days of an inspection.

(4) Updating the Expedited Settlement Offer Worksheet. Working with OCE's Crosscutting Policy Staff, the Expedited Settlement Offer Worksheet has been updated to account for inflation since May 2006 by increasing the line item penalty amounts by 20%. The workgroup also updated the worksheet to reflect the requirements and citations from EPA's 2017 CGP. We also made the worksheet more generic where possible by putting specific permit requirements in a separate column. The intent of these modifications is to streamline the worksheet and make it easier to adapt to state-issued general permits. We also clarified in the *Guidance for the Revised Construction Stormwater Expedited Settlement Agreement Program* that regions with authorized states have the discretion to revise the worksheet to reflect equivalent requirements in state-issued construction general permits. This includes modifying the violation descriptions in column C to better reflect language in a state-issued permit, replacing the permit citations in column E with the appropriate state permit citations, and incorporating the specific state permit language in column K (which is a reference column for enforcement staff). This will allow the Expedited Settlement Offer Worksheet to be used more efficiently and effectively in authorized states.

Evaluation of the Revised ESA Program Pilot

The 2014 ESA Guidance recommends that ESA program pilots be evaluated for effectiveness. The revised Construction Stormwater ESA Program will be piloted for 30 months, and the Agency will conduct an evaluation after the pilot has been in effect for 24 months. This will allow the Agency to evaluate information from two full construction seasons, complete the evaluation, propose modifications if necessary, and finalize the ESA Program before the pilot expires. Most of the information that will be reviewed as part of the evaluation is data that is already required by ICIS. The exception is information on ESAs issued to Repeat Violators. OCE's Water Enforcement Division will periodically request this information from the regions.

Experienced enforcement staff from several regions participated on the workgroup to update and modify the Construction Stormwater ESA Program. I appreciate the considerable time, effort and expertise devoted to this project by these workgroup members.

If you have any questions regarding this ESA Program, please contact Mark Pollins, Director, Water Enforcement Division, at 202-564-4001, or Caitlin Cunningham of his staff at 202-564-0477.

Attachments

cc: NPDES Water Enforcement Managers, Regions 1 – 10
Carol Holmes, Crosscutting Policy Staff
Mark Pollins, Director, Water Enforcement Division

**GUIDANCE FOR THE REVISED CONSTRUCTION STORMWATER
EXPEDITED SETTLEMENT AGREEMENT PROGRAM
PILOT – SEPTEMBER 2019**

Appropriate Use of the Expedited Settlement Agreement

Clean Water Act (CWA) stormwater cases often involve facilities or sites where the cumulative effect of discharges can have significant environmental impact. In construction stormwater cases, issuing timely and consistent enforcement actions is necessary to deter future violations and promote the prompt return to compliance. This can be achieved through an Expedited Settlement Agreement (ESA) Program.¹ This document provides guidance for use of ESAs to resolve violations of construction stormwater requirements in situations where the violations can be corrected quickly and an appropriate penalty can be collected within a short amount of time, generally a few months from the Environmental Protection Agency's ("EPA" or "the Agency") discovery of the violation. This Guidance supersedes the ESA Program Guidance issued in May 2006.

Under the ESA approach, in specified circumstances a violator may resolve its violations through an expedited process in which the violator: (1) corrects identified deficiencies as expeditiously as possible; (2) signs an agreement with EPA certifying prompt correction; and (3) pays a penalty. Violations appropriate for expedited settlements are easily detected through an inspection or a simple information request, are easily correctable, and may pose some potential harm to human health or the environment, but do not result in significant harm or present an imminent and substantial endangerment to human health or the environment. In requiring a respondent to correct deficiencies as soon as possible, certify to those corrections and pay a penalty, the ESA achieves the same ends as an administrative compliance order, but in a quicker, more easily administered format.

Eligibility Criteria for Use of Expedited Settlement Agreements

The criteria below describe when a site can be considered for the ESA Program. The purpose of the ESA criteria is to ensure that ESAs are issued under the appropriate circumstances. Sites that meet all the following criteria may be eligible for an ESA:

- (1) Sites where the penalty calculated via the *Expedited Settlement Offer Worksheet- Findings and Alleged Violations (Expedited Settlement Offer Worksheet)* does not exceed \$54,000;
- (2) For Repeat Violators (defined below), site operators who have been issued a formal enforcement action for stormwater violations within the last five years where the cumulative total penalty amount from the previous actions and the currently proposed ESA does not exceed \$54,000. The cumulative total penalty amount includes penalties paid by the operator for violations of a state or federal construction general permit (CGP), multi-sector general permit (MSGP), Municipal Separate Storm Sewer (MS4) permit for a violation related to construction

¹ An ESA offer developed under the approach described here is a tool for quickly resolving certain CWA stormwater violations. It is not appropriate for use as a penalty demand in an administrative penalty hearing or a judicial trial. Furthermore, whether the Agency decides to use the ESA approach at all is purely within EPA's discretion.

undertaken by the permittee, or individual stormwater permit. This also includes both EPA and state actions against the same entity, whether at the same or different construction sites;

(3) Sites where there is no evidence of significant harm to human health or the environment (e.g., turbidity observed in the receiving water), but the violations are serious enough, individually or cumulatively, to warrant a penalty. In determining the appropriateness of an ESA, regions should consider the nature and duration of the violations as well as the economic benefit gained as a result of delayed compliance. For example, if the economic benefit gained was significant and/or the violations have been sustained, an ESA may not be appropriate; and

(4) Sites where there is no evidence of non-allowable, non-stormwater discharges (e.g., industrial process wastewater such as discharges from a concrete batch plant operation, or discharges of concrete washout, soaps, solvents, or detergents).

EPA can issue multiple concurrent ESAs to the same operator, for example, where the same operator is simultaneously constructing more than one development in the same EPA region.² In this situation, the cumulative penalty cannot exceed \$54,000. This allows EPA to address violations by the same operator at multiple sites when the violations are not sufficiently egregious to warrant a traditional Administrative Penalty Order (APO), but still egregious enough to warrant a penalty.

There are no site size restrictions on the use of the ESA. In general, however, the larger the site the greater the potential for significant environmental harm thereby reducing the likelihood that an ESA would be appropriate. EPA should carefully consider site size prior to using the ESA.

Requirements for Repeat Violators

For this ESA Program, a Repeat Violator is an operator of a construction site who has been issued a formal enforcement action for stormwater violations during the last five years.³ This includes formal enforcement actions with or without penalties for violations of a CGP; an MSGP; an MS4 permit where the permit violation relates to construction undertaken by the permittee; or an individual stormwater permit. Prior formal enforcement actions also include both EPA and state actions against the same operator whether at the same or different construction sites.

As described in (2) above, Repeat Violators are eligible for an ESA provided the cumulative penalty amount for both state and EPA actions over the last five years, including the currently proposed ESA, does not exceed \$54,000, and the site meets all other ESA criteria. When calculating a penalty for a Repeat Violator, an escalation factor should be applied. A 25% escalation factor should be applied to the ESA if it is the second formal enforcement action issued over the previous five years, and a 50% escalation factor shall be applied if it is the third or more formal enforcement action issued over the previous five years. For example, if the penalty calculated using the *Expedited Settlement Offer Worksheet* is \$10,000, the final total

² Concurrent means that the ESA offers were issued in response to inspections that were conducted for all the sites, or compliance information that was received for all the sites, within a short time frame, and the ESA offers were therefore all issued within a short time frame.

³ For this ESA, formal enforcement actions include Administrative Penalty Orders, as well as Administrative Orders, Consent Agreement and Final Orders, Administrative Orders on Consent, etc.

penalty amount would be \$12,500 and \$15,000 for the second and third formal enforcement actions, respectively. An escalation factor should be applied regardless of whether the previous formal enforcement actions included a penalty. An escalation factor would not be applied in situations where multiple ESAs are issued concurrently to the same operator.

Although the eligibility criterion for Repeat Violators is based on the cumulative total penalty amount over the last five years, regions should also consider on a case-by-case basis whether an ESA is appropriate in a situation where the operator has previously been issued one or more formal enforcement actions but has not been subject to any prior penalties. For example, an ESA may not be appropriate if the prior violations were significant, the operator is repeating the same types of violations, or the non-penalty formal enforcement action was recently issued. The regions should consider the facts associated with prior enforcement actions together with all other case-specific circumstances (e.g., the size and sophistication of the operator and the egregiousness of the current violations) when exercising its enforcement discretion and determining the appropriateness of an ESA.

Procedures

This section describes the procedures for developing an individual ESA offer, issuing the ESA offer, and finalizing the ESA.

1. Following an inspection, receipt of information responding to a Clean Water Act § 308 information request or receipt of other compliance-related information, enforcement staff consults the ESA eligibility criteria to determine whether the site is eligible for an ESA.
2. If the site is eligible for an ESA, enforcement staff complete the *Expedited Settlement Offer Worksheet* and calculate a proposed penalty. Penalties should be based on all deficiencies found at a site, including statutory violations, violations of a NPDES permit and, in the case of facilities without a NPDES permit, deficiencies that would have constituted a violation at a properly permitted facility. In short, all deficiencies at a site should be considered, regardless of whether the operator obtained a permit, when calculating a penalty. If the operator is a Repeat Violator, as defined above, the appropriate escalation factor is applied to the penalty. The *Expedited Settlement Offer Worksheet* form will be incorporated by reference into the Expedited Settlement Agreement.

The specific language and the citations in the attached *Expedited Settlement Offer Worksheet* reflect EPA's 2017 Construction General Permit. Regions with authorized states have the discretion to revise the worksheet to reflect equivalent requirements in state-issued construction general permits. This includes modifying the violation descriptions in column C to better reflect language in a state-issued permit, replacing the permit citations in column E with the appropriate state permit citations, and incorporating the specific state permit language in column K (which is a reference column for enforcement staff). Although not required, this will allow the *Expedited Settlement Offer Worksheet* to be used more efficiently and effectively in authorized states.

3. Inspectors should not leave an *Expedited Settlement Offer Worksheet* at a site after an inspection. If it is a region's practice, inspectors can choose to leave a form at the site at the time of the inspection that identifies the inspector's preliminary inspection observations. It is important to note, however, that any form identifying the preliminary inspection observations is only an information tool and EPA 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 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 the inspection and imposes no obligations on the facility/site operator.
4. An enforcement manager should review the *Expedited Settlement Offer Worksheet* and approve the appropriate penalty. Once the penalty is finalized, EPA mails a cover letter transmitting an *Expedited Settlement Agreement*, which includes the *Expedited Settlement Offer Worksheet* and the *Expedited Settlement Agreement Payment Instructions*, to the operator. The ESA should be mailed within 21 business days, if possible, but at a maximum not to exceed 60 calendar days from the date of the inspection or the Agency's receipt of a response to a Clean Water Act § 308 information request or receipt of other compliance information, as appropriate. Issuance of an ESA offer within 21 business days is the Agency's goal where possible, but the Office of Enforcement and Compliance Assurance (OECA) acknowledges that the 21-day goal is not always achievable. The 60-day deadline is consistent with the Agency's overall goal of issuing inspection reports within 60 calendar days of an inspection. An example cover letter and templates for the ESA form and payment instructions are attached.
5. At the regions' discretion, the cover letter transmitting the ESA offer may be a useful tool for reiterating the advantages of an ESA to the ESA recipient. For example: *an ESA is a streamlined settlement agreement that provides a reduced, non-negotiable penalty and minimized transaction costs in lieu of a more traditional administrative enforcement process. In accepting an ESA offer and its benefits of reduced penalties and transaction costs, the recipient agrees to waive its opportunity for a hearing and certifies it has corrected all violations.* Some regions may also choose to provide the statutory maximum penalty.
6. The operator is given 30 days to return a signed ESA to the Agency. Penalty payment must be made in the manner outlined in the accompanying *Expedited Settlement Agreement Payment Instructions*. Some regions may require the respondent to submit payment within ten days of receiving notice from EPA that the ESA is effective. Other regions may require payment of the penalty prior to respondent's returning of the signed ESA offer.⁴ Some regions may also require additional documentation of compliance such as photographs. Regions may revise the ESA form and the ESA payment instructions to

⁴ The Agency's *Revised Guidance on the Use of Expedited Settlement Agreements* issued by Cynthia Giles on November 24, 2014, discusses two alternative approaches for payment of the penalty, i.e., a region may require payment before the signed ESA is returned to the Agency by the respondent or after the ESA is final. Under both alternatives, the signed ESA should either be returned within 30 days or an extension requested and granted.

be consistent with region-specific ESA procedures, including how and when the penalty is paid, provided those procedures are consistent with the Agency's *Revised Guidance on the Use of Expedited Settlement Agreements* issued by the OECA Assistant Administrator on November 24, 2014 (2014 Revised ESA Guidance).

7. If the signed ESA is not received within 30 days, it is automatically withdrawn without prejudice to EPA's ability to institute a more traditional enforcement action for noncompliance, such as issuing a unilateral administrative penalty complaint. Regions have the discretion to extend the offer for cause, but generally should not grant an extension beyond 60 to 90 days after the violator's receipt of the ESA offer. If the offer is withdrawn, the region should be prepared to escalate its enforcement response by filing a unilateral administrative penalty complaint under 40 CFR Part 22.⁵
8. If the operator returns a signed ESA to the EPA, the appropriate delegated official(s) in the region should sign the ESA. The signatory or signatories would be the official(s) authorized to issue complaints and sign consent agreements.
9. The ESA is a type of consent agreement subject to 40 CFR Part 22. Once ratified by a final order, the ESA and final order would simultaneously begin and conclude a Part 22 proceeding under 40 CFR § 22.13(b).
10. Before the ESA is ratified by a final order, the region must provide public notice and a reasonable opportunity for public comment on the ESA. See CWA § 309(g)(4)(A). In the case of settlement by consent agreement and final order in a CWA case, the final order cannot be issued earlier than 40 days after public notice is issued or earlier than 10 days after the close of the public comment period. See 40 CFR § 22.45(b)(1) and (c)(3). Consequently, OECA recommends a 30-day comment period. Regions should consider any public comments received in that period.
11. If there are no public comments warranting a change to the ESA, the region should proceed with issuance of the final ESA. No sooner than 10 days after the close of the recommended comment period, an appropriate official at the region (the Regional Judicial Officer or Regional Administrator) may sign and ratify the ESA (40 CFR §§ 22.4(h) and 22.18(b)(3)). No settlement is final without a final order from the Regional Administrator or Regional Judicial Officer ratifying the ESA. (40 CFR § 22.18(b)(3)).
12. If there are public comments, the Agency will address them. Under 40 C.F.R. § 22.45(c)(4), a commenter may petition the Regional Administrator to set aside the proposed settlement. The Agency may, as allowed by 40 C.F.R. § 22.45(c)(4)(iii), withdraw the consent agreement and proposed final order to consider any such petition. There is also a process for the Regional Administrator to assign a Petition Officer to rule

⁵ This does not apply in situations where new information indicates that a penalty action is not appropriate or where a decision is made to include such violations as part of an escalation of enforcement.

on any petition to set aside the proposed settlement. The effective date of the final order would depend on the resolution of the petition.

13. Under 40 C.F.R. § 22.18(c), the ESA and final order would resolve only the respondent's liability for federal civil penalties for the alleged violations. The EPA reserves its right to take any other enforcement action, such as issuing an administrative compliance order. Generally, however, because the owner/operator would certify having corrected alleged violations (listed in an attachment incorporated into the ESA), there would be no need to issue a compliance order. The proposed ESA form specifically acknowledges the EPA's right to issue a compliance order for any uncorrected violations.
14. Regions should consult the most current Office of Compliance guidance for ICIS reporting requirements. Because certification of compliance is a prerequisite for entering into an ESA, ESAs generally do not have accompanying AOs and therefore the only action reported in ICIS would be the ESA. Regions should report the environmental benefit in terms of the estimated sediment reduction achieved as a result of the ESA. The reduction in the amount of sediment discharged from a construction site can be estimated using the Stormwater Pollutant Reduction Calculator.

Attachments:

Expedited Settlement Offer Worksheet – Findings and Alleged Violations

Example Cover Letter

Template for the ESA Form

Template for the ESA Payment Instructions

**Expedited Settlement Offer Worksheet
Findings and Alleged Violations**

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							
		Inspector Name:					
		Inspector Agency:					
		Entrance Interview Conducted:					
		Exit Interview Conducted:					
		Exit Interview given to:					
		Exit Interview time:	Date:				
LOCATION AND ADDRESS OF SITE							
2							
FACILITY DESCRIPTION / CONTACT NAMES							
3		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 Disturbed Acres for Whole Common Plan:					
		Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?					
PERMIT COVERAGE		CGP Citation	RCA*	No. of Deficiencies	Penalty Amount	Total	2017 EPA CGP Requirements
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	\$600.00	\$0	
USE OF CATIONIC TREATMENT CHEMICALS (WHERE APPLICABLE)							
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			\$300.00	\$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			\$300.00	\$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	\$60.00	\$0	Did not post: NPDES ID (permit tracking number assigned to NOI); contact for obtaining additional information; URL for SWPPP or statement to contact EPA for SWPPP; or information on how to report discharges to EPA.
SWPPP REVIEW							
7	No SWPPP prepared at time of inspection. (If no SWPPP, leave elements 8 - 21 blank.)	7.1			\$6,000.00	\$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	\$1,000.00	\$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			\$600.00	\$0	
	B SWPPP does not identify stormwater team and respective responsibilities.	7.2.2			\$300.00	\$0	
10	SWPPP does not include:						
	A Description of the nature of construction activities.	7.2.3.a			\$120.00	\$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			\$120.00	\$0	
	C A description of any on/next/offsite construction support activities.	7.2.3.d			\$600.00	\$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	\$300.00	\$0	SWPPP must include a description and projected schedule for each portion of the site for the following: (i) commencement of construction activities including clearing/grubbing, mass grading, demolition activities, site preparation, final grading, and creation of soil and vegetation stockpiles requiring stabilization; (ii) temporary or permanent cessation of construction activities; (iii) temporary or final stabilization; (iv) removal of temporary stormwater controls, construction equipment, and vehicles, and cessation of construction-related pollutant-generating activities.
	E A list and description of all pollutant-generating activities.	7.2.3.g			\$300.00	\$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			\$300.00	\$0	Required information for public emergency situations includes: cause of the public emergency, substantiating information, description of construction necessary to reestablish affected public services.
11	Site Map						
	A Site map not included in SWPPP.	7.2.4			\$600.00	\$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		X	\$60.00	\$0	Site map must show (a) property boundaries; (b) locations of earth-disturbing activities; slopes before and after grading activities; locations of stockpiles; waters of U.S. crossings; designated vehicle exits onto paved roads; locations of structures & other impervious surfaces upon completion of construction; locations of onsite/off site construction support activities; (c) locations of all waters of U.S. and identification of any impaired or Tier 2, 2.5 or 3 waters; (d) areas of federally listed critical habitat;(e) type and extent of pre-construction cover; (f) before and after drainage patterns; (g) authorized discharge locations (storm drain inlets and directly to waters); (h) locations of potential pollutant generating activities; (i) locations of stormwater controls; and (j) locations of chemical usage and storage.
12	SWPPP does not:						
	A Identify all authorized non-storm water discharges that will or may occur.	7.2.5			\$600.00	\$0	SWPPP must identify all authorized non-storm water discharges listed in Part 1.2.2 of the CGP that will or may occur.

	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 \$300. 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, 2.2					\$300.00	50	SWPPP must describe the specific controls to be implemented to meet the effluent limits for erosion and sediment controls in Part 2.2 of the Permit.	
			7.2.6			X		\$100.00	50	For each specific erosion and sediment control identified in the SWPPP, the SWPPP must include any applicable design specifications and routine maintenance specifications, the projected schedule for installation/implementation for each of the specific controls, and any other required information. Other required information may include, where applicable, information regarding: alternatives to a 50-foot Natural Buffer; situations where perimeter controls for a linear project are infeasible; information required for stabilization measures including specific practices that will be used, stabilization deadline that will be met and information relevant for arid, semi arid or drought areas; situations where sediment basin outlet structures that withdraw water from the surface are infeasible; use of treatment chemicals.	
	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 \$300. 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, 2.3				X	\$300.00	50	Describe the specific controls to be implemented to meet the effluent limits for pollution prevention in Part 2.3 of the Permit.	
			7.2.6			X		\$100.00	50	For each specific pollution prevention control measure identified in the SWPPP, the SWPPP must include any applicable design specifications and routine maintenance specifications, the projected schedule for installation/implementation for each of the specific controls, and any other required information.	
	D	Describe the specific controls to be implemented to meet the effluent limits for construction dewatering. 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, 2.4				X	\$300.00	50	Describe the specific controls to be implemented to meet the effluent limits for construction dewatering in Part 2.4 of the Permit.	
			7.2.6						50	For each specific dewatering control measure identified in the SWPPP, the SWPPP must include any applicable design specifications and routine maintenance specifications, the projected schedule for installation/implementation for each of the specific controls, and any other required information.	
	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					\$300.00	50		
13	A	SWPPP does not describe the procedures for Inspection, Maintenance and Corrective Action.	7.2.7; 2.1.4; 4; 5					\$600.00	50		
	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		\$120.00	50	Description of procedures for Inspection, Maintenance and Corrective Action must include (1) the inspection schedule; (2) where applicable, the location of rain gauge or weather station for rainfall data, and/or, (3) beginning and ending dates of seasonal arid period, valid drought period or frozen conditions for reduced inspections.	
14		SWPPP does not include documentation that required personnel were, or will be, trained in accordance with Permit requirements.	7.2.8; 6					\$300.00	50		
15		Threatened and Endangered Species Act documentation is not included in SWPPP.	7.2.9.a					\$600.00	50		
16		Historic Properties documentation is not included in SWPPP.	7.2.9.b					\$600.00	50		
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					\$600.00	50	SWPPP must document contacts, where applicable, with UIC regulatory authority regarding compliance with SDWA UIC Requirements for Certain Subsurface Stormwater Controls (e.g., infiltration trenches; commercially manufactured subsurface detention vaults, chambers or other such devices; drywells, seepage pits or improved sinkholes).	
18		SWPPP not signed/dated/certified.	7.2.10					\$600.00	50		
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		\$300.00	50		
20		Copy of SWPPP is not retained on site or otherwise easily accessible.	7.3					\$600.00	50		
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		\$60.00	50	SWPPP (including site map) must be updated/modified within 7 days to reflect the following: (a) new operators became active, or changes were made to construction plans, stormwater controls, or other activities; (b) changes to site map where operation control has been transferred; (c) EPA determines SWPPP modifications are necessary; (d) EPA determines installation/implementation of additional controls are necessary; (e) revisions to applicable federal, state, tribal or local requirements that affect stormwater controls; or (f) changes in chemical treatment systems or chemically enhanced stormwater control.	
	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		\$60.00	50	Records showing dates of SWPPP modifications must be maintained and include name of appropriate person authorizing each change; changes must be authorized by appropriate person; and must provide notification where required to any operators who may be impacted by the change.	
22	INSPECTIONS										
	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	TOTAL number of inspections conducted/documentated									
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 or False		
	B	Inspections not performed and timely documented. (Count each failure to inspect and document as one violation.)	4.2 - 4.4; 4.7.1			X		\$300.00	50	Inspections must be performed and timely documented either once every 7 days, or once every 14 days and within 24 hours after a storm event of 0.25 inches or greater. Where an increase or reduction in inspection frequency applies (per Parts 4.3 or 4.4), inspections must be performed/documentated in accordance with applicable frequency	
24		Inspections not conducted by qualified personnel. (Count each inspection conducted without qualified personnel as one violation)	4.1			X		\$60.00	50		
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		\$60.00	50	Must inspect all required areas as identified in the permit (e.g., all stormwater controls including pollution prevention controls; storage and maintenance areas; all areas where stormwater typically flows within the site including drainage ways designed to divert, convey and/or treat stormwater; discharge points; areas that have been cleared, graded, or excavated and not yet stabilized; locations where stabilization measures have been implemented.	
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		\$60.00	50	Site inspection report must include: (a) date, (b) name and title of inspector, (c) summary of inspection findings in accordance with Part 4.6 and any necessary maintenance or corrective actions, (d) rainfall data (where required), and (e) if unsafe to inspect a portion of the site, a description of the reason. Must also document the visual quality of any observed discharge	
27	A	Inspection reports not properly signed/certified. (Count each failure to sign/certify as one violation.)	4.7.2			X		\$60.00	50		
	B	Copies of inspection reports have not been retained onsite or at easily accessible location.	4.7.3; 4.7.4					\$600.00	50		
	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.)	2.1.4; 2.2; 5.2			X		\$300.00	50	Ensure that all stormwater controls are maintained and remain in effective operating condition. Permittee must (a) comply with any specific maintenance requirements listed in this permit and recommended by the manufacturer, (b) initiate routine maintenance immediately and complete such work by close of next business day, or, (c) if stormwater control needs significant repair or replacement, repair/install and make operational within 7 calendar days (unless infeasible and in compliance with Part 5.2.3). Permittee must remove sediment before accumulating to one-half of the above-ground height of any perimeter control as required by Part 2.2.3.a; when sediment has been tracked out, remove it as required by end of the same business day (or next business day if track out occurred on a non-business day) as required by Part 2.2.4.d; clean, remove or replace inlet controls as required, and/or remove sediment accumulation adjacent to inlet controls by the end of the same business day in which it is found (or, if not feasible, by the end of the following business day) as required by Part 2.2.10.b; and remove sediment from sediment basin or traps when design capacity reduced by 50% or more as required by Part 2.2.12.f.	
	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		\$300.00	50	Must complete a Corrective Action report when required that: (1) documents, within 24 hours of identification, the specific condition and date/time it was identified; (2) documents, within 24 hours of completing the action, the action taken to address the condition; (3) is kept at the site or at an easily accessible location.	
	C	Corrective Action Reports not properly signed. (Count each failure to sign as one violation.)	5.4.3			X		\$60.00	50		
	Control measures are not properly selected, installed or maintained										
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		\$600.00	50		

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	\$600.00	\$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	\$1,200.00	\$0	
	B If Common Drainage is less than 10 acres	2.2.3			X	\$600.00	\$0	
32	Failure to minimize sediment trackout in accordance with Permit requirements. (Count each failure as one violation.)	2.2.4.a-c			X	\$600.00	\$0	Permittee must minimize sediment trackout by (a) restricting vehicle use to properly designated exit points, (b) using appropriate stabilization techniques at all points that exit onto paved roads, and (c) implementing any other necessary track-out controls.
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	\$600.00	\$0	
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	\$600.00	\$0	
35	Failure to minimize disturbances of "steep slopes". (Count each failure as one violation.)	2.2.7			X	\$600.00	\$0	
36	Failure to preserve native topsoil (unless infeasible). (Count each failure as one violation.)	2.2.8			X	\$600.00	\$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	\$600.00	\$0	Permittee must restrict vehicle and equipment use in these locations to avoid soil compaction, and use techniques that rehabilitate and condition soils as necessary before seeding or planting areas of compacted soil.
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	\$600.00	\$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 slow down runoff to minimize erosion. (Count each failure as one violation.)	2.2.11			X	\$600.00	\$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	\$1,200.00	\$0	If a sediment basin or similar impoundment is installed, it must comply with the following: (a) must be located outside a water of the U.S. or natural buffers; (b) must be designed to avoid collecting water from wetlands; (c) must provide storage for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained; (d) must utilize outlet structures that withdraw water from the surface; and (e) must use erosion controls and velocity dissipation to prevent erosion of inlets and outlets.
41	Failure to comply with Permit requirements for use of treatment chemicals. (Count each failure as one violation.)	2.2.13.a-f			X	\$200.00	\$0	If using treatment chemicals, you must comply with the following: (a) use conventional erosion and sediment controls before and after the application of treatment chemicals; (b) select appropriate treatment chemicals; (c) minimize discharge risk from stored chemicals; (d) comply with state/local requirements; (e) use good engineering practices and chemical provider/supplier's specifications; (f) ensure proper training; and (g) comply with any additional measures specified by Permitting Authority for the authorized use of cationic chemicals.
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	\$600.00	\$0	Permittee must initiate installation of stabilization measures immediately where construction activities have permanently ceased or will be temporarily inactive for 14 or more calendar days, and complete installation of stabilization measures as soon as practicable but no later than 14 calendar days (where five acres or less) or 7 calendar days (where more than five acres) after stabilization has been initiated, or (where applicable) stabilization must be in compliance with appropriate timeframes for the following exceptions: *Exceptions: (a) Arid, semi-arid areas and drought-stricken areas (0 to 10 inches average annual rainfall); (b) Unforeseen circumstances; (c) Discharges to a sediment- or nutrient-impaired water, or to a water that is Tier 2, 2.5 or 3 for anti-degradation purposes.
43	Final Stabilization Criteria not achieved as required.	2.2.14.b				\$1,200.00	\$0	Permittee must establish uniform, perennial vegetation that provides 70% or more of the cover that is provided by vegetation native to local undisturbed areas, or otherwise comply with the Exceptions requirements.
44	Other needed control measures not properly selected or installed. (Each omission is 1 violation.)	2.1			X	\$600.00	\$0	
	Pollution Prevention Requirements							
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	\$600.00	\$0	Provide an effective means of eliminating the discharge of spilled or leaked substances; comply with SPCC requirements if applicable; ensure adequate supplies available for spills, leaks and disposal of used liquids; use drip pans and absorbents; dispose of or recycle oil and oily wastes as appropriate; clean up spills or contaminated surfaces immediately using dry clean-up measures, and eliminate the source of the spill.
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	\$600.00	\$0	Permittee must provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water and other types of wash waters; ensure wash water is not routed to areas of exposed soil, and provide proper storage of soaps, detergents or solvents.
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	\$600.00	\$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				\$1,000.00	\$0	Direct wash water into a leak-proof container or leak-proof and lined pit designed so overflows cannot occur; remove and dispose of hardened concrete w consistent with your handling of other construction wastes; locate any washout or cleanout activities as far away as possible from waters of the US, stormwater inlets or conveyances; to the extent feasible, designate areas to be used for these activities and conduct such activities only in these areas.
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	\$600.00	\$0	Direct wash water into a leak-proof container or leak-proof and lined pit designed so overflows cannot occur; dispose of liquid waste in accordance with applicable requirements in Part 2.3.3; locate any washout or cleanout activities as far away as possible from waters of the US, stormwater inlets or conveyances; to the extent feasible, designate areas to be used for these activities and conduct such activities only in these areas.
50	Failure to comply with requirements for application of fertilizers.	2.3.5.a-f				\$600.00	\$0	For application of fertilizers, you must: apply at a rate and in amounts consistent with manufacturer's specifications, or document in SWPPP departures from manufacturer specifications where appropriate in accordance with Part 7.2.6.b.ix; apply at the appropriate time of year; avoid applying before heavy rains; never apply to frozen ground or conveyance channels; and follow all applicable federal/state/tribal/local requirements.
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	\$600.00	\$0	For construction dewatering, you must comply with the following requirements to minimize the discharge of pollutants: provide appropriate treatment to minimize discharges of pollutants; prevent discharge of visible floating solids or foam; use oil-water separator or suitable filtration device when required; use vegetated upland areas for infiltration to the extent feasible; comply with velocity dissipation requirements (Part 2.2.11); haul away or return backwash water to the beginning of the treatment process; and replace/clean filter media when required.
	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:							\$0	
53	ADJUSTMENT FOR A REPEAT VIOLATOR:							

Repeat Violator: To adjust the settlement amount for Repeat Violators, multiply 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. If this is not a Repeat Violator, leave this row blank.

Adjustment for Repeat Violator:

	X	50.00	\$0
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FINAL TOTAL EXPEDITED SETTLEMENT FOR REPEAT VIOLATOR:

\$0

*RCA: Requires Corrective Action



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region [insert]
[add address]

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA- _____ - _____, NPDES Permit No. [insert number]

The undersigned representatives of the United States Environmental Protection Agency (EPA) and [[NAME], [a [STATE] corporation, individual, as applicable] (Respondent). enter into this Expedited Settlement Agreement (Agreement) to resolve Respondent's civil penalty liability for alleged violations of the [STATE/NATIONAL] Pollutant Discharge Elimination System storm water permit cited above (Permit) [optional: could insert site description and define as Site] [alternative if unpermitted discharges - after "liability for" substitute "allegedly discharging storm water without a permit at [site description (Site)]"] .

The EPA finds that: (1) Respondent failed to comply with the Permit, and the Permit was issued pursuant to section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342 [alternative (1) for unpermitted discharges: Respondent discharged storm water from the Site without authorization by any permit issued pursuant to the Clean Water Act (Act) in violation of section 301 of the Act, 33 U.S.C. § 1311]; (2) Respondent is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5); and (3) Respondent is responsible for the alleged violations specified in the attached Expedited Settlement Offer Worksheet - Findings and Alleged Violations (Form). The Form is incorporated into this Agreement by reference.

The EPA also 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 \$[amount]. Respondent waives the rights (1) to 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). The civil penalty will be due no later than 10 days after the issuance of the Final Order and shall be made in accordance with the attached Expedited Settlement Agreement Payment Instructions. [eliminate last sentence if payment expected prior to Final Order and held by finance office]

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; and (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. [if payment expected prior to final order, add "(3) Respondent, in accordance with the attached Payment

Instructions, has provided payment of the civil penalty, which Respondent understands is to be held by the EPA financial management center on behalf of Respondent pending issuance of the Final Order"]

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 Clean Water Act alleged in the Form. This Agreement does not affect the right of the 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, e.g., 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 regulation, order, or permit issued pursuant to the Act.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on it. The EPA will address any comments on this 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.

[For electronic service, add "The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: [insert ORC attorney's e-mail address] (for Complainant), and [insert respondent's email address] (for Respondent)."]

Attachments:

- 1. Expedited Settlement Offer Worksheet - Findings and Alleged Violations
2. Payment Instructions

APPROVED BY THE EPA:

Date: _____

[Insert name(s) and title(s) of whichever individual(s) are authorized to issue complaints and sign consent agreements for the EPA. This may be more than one individual. Note also the "complainant" is not the EPA but instead whoever is authorized to issue a complaint.]

APPROVED BY RESPONDENT:

Name (print): _____

Title (print): _____

Signature: _____

Date: _____

FINAL ORDER: 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 the EPA has received no comments concerning this matter.

[if comments were received, replace the above paragraph with: "FINAL ORDER: EPA received comments within 40 days of issuance of the public notice pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and the EPA has reviewed and responded to comments concerning this matter.]

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

Date: _____
Hon. **[insert name of RJO]**
Regional Judicial Officer
[insert address of RJO]

[example cover letter transmitting offer to enter into Expedited Settlement Agreement]

By Certified Mail, Return Receipt Requested

No.

[name/title/address]

Dear [Mr./Ms. etc.]:

On [insert date], Region [insert] of the U.S. Environmental Protection Agency (EPA) conducted a storm water compliance inspection of [insert details or relevant site and define as Site if using that term later in the letter – include name of owner/operator, defining it as the Company, if appropriate]. The purpose of the inspection was to evaluate [your if individual owner/operator - otherwise the Company's] compliance with applicable storm water requirements, including [usually there is a permit, so add appropriate language such as: "the conditions of [Permit No. xxxx] (Permit), issued pursuant to section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342" / where no permit, instead substitute language such as "section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311, which prohibits discharging pollutants into waters of the United States without a permit or other authorization"]. A copy of the EPA's inspection report is enclosed.

The inspection revealed instances in which [you / the Company] appeared not to have complied with the Permit's requirements [or, if no permit, revealed that there had apparently been storm water discharges from the Site without authorization by any permit issued under the Act]. The apparent violations are outlined in the enclosed Expedited Settlement Offer Worksheet – Findings and Alleged Violations (Form).

The EPA has authority under section 309 of the Act, 33 U.S.C. § 1319, to take enforcement actions, including seeking civil penalties, for the alleged violations specified in the Form. At this time, rather than undertake a more traditional enforcement action for civil penalties, the EPA is offering [you / the Company] the opportunity to enter into the enclosed Expedited Settlement Agreement (ESA), provided [you / the Company] (1) correct[s] the deficiencies cited in the inspection report and in the Form by [date], and (2) agree to pay an administrative civil penalty of \$[insert].

It is important for all deficiencies identified in the Form and inspection report to be corrected promptly. Before the EPA agrees to enter into the ESA, you would need to submit evidence, including photographs, demonstrating all such deficiencies have been corrected. Please note that by signing the ESA, [you / the Company] would certify all violations alleged in the Form have been corrected.

If you intend to enter into the ESA, please sign and return it, together with documentation of the deficiencies having been corrected, within 30 days of your receipt of this letter to:

[insert name and contact information for EPA person]

Although the ESA would commit **[you / the Company]** to pay a civil administrative penalty, you do **not** need to make that payment at the time you return the signed ESA to the EPA. After the EPA representative signs the ESA, the EPA will provide an opportunity for the public to comment on it. Assuming no public comments warrant a change to the ESA, we would then ask the Regional Judicial Officer to issue a Final Order approving the ESA. You would then be notified of the issuance of the Final Order, and your penalty would be due 10 days after the Final Order is signed. The mechanics for payment are set forth in the Expedited Settlement Agreement Payment Instructions accompanying the ESA.

Entering into the enclosed ESA and paying the penalty would resolve **[your / the Company's]** liability for federal civil penalties for the violations alleged in the Form. In other words, for all violations alleged in the Form there would be no additional civil penalties. As with any settlement of administrative civil penalties, regardless of whether you enter into the ESA, the EPA would reserve its rights to issue an administrative compliance order, to seek a court injunction directing compliance, and/or to pursue criminal sanctions, in the event any such actions are appropriate.

This offer will be open for a period of 30 days from your receipt of this letter. If you do not return the signed ESA and documentation of corrective action within that time period, this offer will be automatically withdrawn, and the EPA may pursue a more formal enforcement action for penalties. The EPA is authorized to seek civil penalties of up to \$54,833**[update as appropriate for inflation]** per day of violation. In addition, the EPA may take further enforcement action if you sign the ESA but do not pay the penalty.

The EPA encourages expeditious settlements and is committed to settling this matter fairly and expeditiously. If you have any questions or comments, such as how to document corrective actions, please contact **[Mr./Ms. [insert], at [insert phone number and/or email address]]**. If **[you are/ the Company is]** represented by an attorney in this matter who has questions, please ask the attorney to contact **[insert name and contact information for EPA attorney]**.

We look forward to hearing from you.

Sincerely,

[signature block of appropriate EPA official(s)]

[Note: Because this would be a binding offer, ideally, it would be signed by the EPA individual(s) with delegated authority to enter into CWA Class I consent agreements. In the current national delegation (2-51; 5/11/94) this is the authority to act as a complainant; consent agreements are not specifically mentioned.]

Enclosures:

Expedited Settlement Offer Worksheet – Findings and Alleged Violations
Expedited Settlement Agreement
Payment Instructions