



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2020-0121, NPDES No. IDR1001SK

The undersigned representatives of the United States Environmental Protection Agency ("EPA") and Aspen Homes and Development LLC, ("Respondent"), enter into the Expedited Settlement Agreement ("Agreement") to resolve Respondent's civil penalty liability for alleged violations of the National Pollutant Discharge Elimination System stormwater permit ("Permit") at the facility located at Riverview Heights in Coeur d'Alene, Idaho 83814 ("Site").

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

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

Respondent agrees to pay a civil penalty of \$20,325. Respondent waives the rights to: (1) contest the allegations in the Form; and (2) to appeal any final order an EPA Regional Judicial Officer may issue to ratify this Agreement ("Final Order"). Proof of payment of the civil penalty must accompany this signed copy of the Expedited Settlement Agreement when it is returned to EPA.

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

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

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

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

Attachments:

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

APPROVED BY EPA:

\_\_\_\_ Date: \_\_\_\_\_
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 AND MAILING ADDRESS OF OPERATOR	Telephone Number	NPDES Permit Number				
1		<b>Operator 1</b>	<b>Operator 2:</b>	208-664-9171	IDR1001SK			
		Aspen Homes and Development LLC						
		1831 N. Lakewood Dr., Ste. A		Inspector Name:	Wes Green			
		Coeur d'Alene, ID 83814		Inspector Agency:	IDEQ			
				Entrance Interview Conducted:		Yes		
				Exit Interview Conducted:		Yes		
		<b>LOCATION AND ADDRESS OF SITE</b>		Exit Interview given to:	Jerid Marks			
2		Riverview Heights		Exit Interview time:	4:00 PM	Date:	10/01/2019	
		West River View Drive						
		Coeur d'Alene, ID 83814						
		<b>FACILITY DESCRIPTION / CONTACT NAMES</b>						
3		Name of Site Contact (ESO Worksheet recipient):		Erik Campbell				
		Name of Authorized Official (40 CFR 122.22):		Erik Campbell				
		Inspection Date:		10/01/2019				
		Start Construction Date:		05/02/2019				
		Estimated Completion Construction Date:		07/31/2019				
		If Unpermitted, Number of Months Unpermitted:						
		Name of Receiving Water Body (Indicate whether 303(d) listed):		Spokane River (Tier 2 water, Category 5, impairment pollutants: lead, zinc, phosphorus)				
		Acres Disturbed   Acres for Whole Common Plan:		18.00		52.00		
		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)	N/A	CWA 301			X	\$600	\$0
<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.	N/A	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.)	The inspection report states that there was no posted notice in a publicly accessible location. Mr. Campbell's 5/7/20 e-mail response confirms this also.	1.5		1	X	\$300	\$300
	B	Sign/Notice was missing one or more elements required by the Permit. (Count each omission under B as one violation.)	N/A	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)	N/A	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.	N/A	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.	N/A	7.2.1			X	\$600	\$0
	B	SWPPP does not identify stormwater team and respective responsibilities.	The inspection report states that the SWPPP identifies stormwater team personnel that are listed that are no longer valid (staff turnover). Brian Levo's review of the SWPPP confirms this.	7.2.2		1	X	\$300	\$300
10	SWPPP does not include:								
	A	Description of the nature of construction activities.	N/A	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.	N/A	7.2.3 b, c, e				\$120	\$0
	C	A description of any onsite/offsite construction support activities.	N/A	7.2.3.d				\$600	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
	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.)	The inspection report states that the SWPPP did not contain these details. Brian Levo's review of the SWPPP confirms this. More specifically, the SWPPP fails to contain all four categories under this section (i. - iv.)	7.2.3.f		4	X	\$300	\$1,200
	E	A list and description of all pollutant-generating activities.	N/A	7.2.3.g				\$300	\$0
	F	Public Emergencies: Required information for public emergency situations. NOTE that operator has 30 days to complete SWPPP after commencing construction.	N/A	7.2.3.i & 1.4				\$300	\$0
11		Site Map							
	A	Site map not included in SWPPP.	The inspection report states that the SWPPP did not contain a SWPPP map. Brian Levo's review of the SWPPP confirms this.	7.2.4		1		\$600	\$600
	B	Site map does not include all elements required by the Permit. (Count each omission as one violation up to \$600.)	N/A	7.2.4.a-j			X	\$60	\$0
12		SWPPP does not:							
	A	Identify all authorized non-storm water discharges that will or may occur.	N/A	7.2.5				\$600	\$0
	B	Describe the specific controls to be implemented to meet the effluent limits for erosion and sediment controls. (Count one violation for each missing control measure up to a maximum of \$900.)	N/A	7.2.6., 2.2				\$300	\$0

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
		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.)	N/A	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.)	N/A	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.)	N/A	7.2.6			X \$100	\$0
	D	Describe the specific controls to be implemented to meet the effluent limits for construction dewatering.	N/A	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.)	N/A	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.	N/A	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.	N/A	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.)	N/A	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.	The inspection report states that the SWPPP does not include training documentation. Brian Levo's review of the SWPPP confirms this.	7.2.8; 6		1		\$300	\$300
15		Threatened and Endangered Species Act documentation is not included in SWPPP.	N/A	7.2.9.a				\$600	\$0
16		Historic Properties documentation is not included in SWPPP.	N/A	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.	N/A	7.2.9.c				\$600	\$0
18		SWPPP not signed/dated/certified.	The inspection report states that the SWPPP provided to the inspector was not signed. Brian Levo's review of the SWPPP confirms this.	7.2.10		1		\$600	\$600
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.)	The inspection report states that the SWPPP provided to the inspector did not contain the NOI, acknowledgement letter, or a copy of the Permit. Brian Levo's review of the SWPPP confirms this.	7.2.11 a- c		3	X	\$300	\$900

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
20			Copy of SWPPP is not retained on site or otherwise easily accessible.	The inspection report states that the SWPPP was not available onsite.	7.3		1	\$600	\$600	
21	A		SWPPP (including site map) has not been updated/modified as required by the Permit. (Count each omission as one violation.)	The inspection report states that the SWPPP describes the total area of disturbance at one time to be 5 acres, but observations during the inspection showed that a majority of the 52 acres were disturbed . Brian Levo's review of the SWPPP confirms this.	7.4.1		1	X	\$60	\$60
	B		SWPPP modifications do not meet record keeping, approval or notification requirements. (Count each omission as 1 violation.)	N/A	7.4.2; 7.4.3; 7.4.4			X	\$60	\$0
<b>INSPECTIONS</b>										
22	A		Number of Inspections required if performed every 7 days:	According to the SWPPP, "Site inspections shall be made at least once a week and after daily rainfall of one quarter inch or greater". From the period of 5/2/2019 through 6/1/2020, this would mean that there are 56 instances when site inspections should have been conducted assuming one inspection every 7 days.						
	B		Number of Inspections required if performed every 14 days:	N/A						



			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
	C	If known, and if applicable, number of days of rainfall of > 0.25" :	According to NOAA rainfall data from a nearby weather station, from the period of 5/2/2019 through 4/4/2020 (period of available data), 27 days received >0.25" of rainfall. Aspen Homes completed site inspections on 7 of those days leaving 20 instances of days site inspections were not conducted following >0.25" of rainfall.						
	D	Number of inspections required under a reduced frequency	N/A						
	E	TOTAL number of required inspections	56+20=76						
	F	<b>TOTAL number of inspections conducted/documented</b>	48						
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>	FALSE					True or False	

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
	B	Inspections not performed and timely documented. (Count each failure to inspect and document as one violation.)	76 required inspections from the period of 5/2/19 through 6/1/20. The inspection report states that copies of site inspections were never provided to the inspector. Mr. Campbell's e-mail responses to EPA dated 5/7/20 and 6/30/20 included a combined total of 48 SWPPP inspection reports. This means 28 inspection reports (76-48=28) were not performed and timely documented.	4.2 - 4.4; 4.7.1		28	X	\$300	\$8,400
24		Inspections not conducted by qualified personnel. (Count each inspection conducted without qualified personnel as one violation.)	N/A	4.1		0	X	\$60	\$0
25		<b>Areas to be inspected:</b> Failed to inspect all required areas as identified in the Permit. (Count each omission as one violation.)	The 48 SWPPP inspection reports appear to cover all of the areas required in the Permit.	4.5; 4.6.1		0	X	\$60	\$0
26		Site inspection report does not include all information required by the Permit. (Count each omission as one violation.)	The 48 SWPPP inspection reports appear to include the information required in the Permit.	4.6.6, 4.7.1.a -e		0	X	\$60	\$0
27	A	Inspection reports not properly signed/certified. (Count each failure to sign/certify as one violation.)	8 SWPPP inspection reports are signed by Randall Krysta, Superintendent of the site, which meets signature/certification requirements. 40 SWPPP inspection reports are signed by Jerid Marks, Excavation Manager, which meets signature/certification requirements.	4.7.2		0	X	\$60	\$0
	B	Copies of inspection reports have not been retained onsite or at easily accessible location.	The inspection report states that inspection reports were not available onsite.	4.7.3; 4.7.4		1		\$600	\$600
<b>BEST MANAGEMENT PRACTICES</b>									

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
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.)	The inspection report states that the silt fence installed along the northern boundary of the property was in need of maintenance, repair, or replacement to be in effective operating condition. A complaint received on 9/28/2019 documented turbid runoff from the site due to inadequate stormwater controls. Brian Levo's review confirms this.	2.1.4; 2.2; 5.2		1	X	\$300	\$300
	B	Failure to complete a Corrective Action report when required in accordance with Permit requirements. (Count each missing/deficient report as 1 violation.)	A complaint received on 9/28/2019 documented turbid runoff from the site due to inadequate stormwater controls, which would have triggered corrective action requirements. The inspection report states that corrective action reports were not available onsite. Mr. Campbell's 7/9/20 e-mail response confirms that a corrective action report was not completed.	5.4.1, 5.4.2, 5.4.4		1	X	\$300	\$300
	C	Corrective Action Reports not properly signed. (Count each failure to sign as one violation.)	N/A	5.4.3			X	\$60	\$0
		<b>Control measures are not properly selected, installed or maintained:</b>							
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.)	N/A	2.2.1			X	\$600	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
30		Failure to direct stormwater to vegetated areas to maximize infiltration and filtering (unless infeasible). (Count each failure as one violation.)	N/A	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.)	The inspection report states that silt fencing was only installed along the northern boundary of the property and not upgradient where run-on was likely to occur and contributed to rill erosion along the embankment. Brian Levo's review confirms this.						
	A	If Common Drainage is 10+ acres	Drainage is 18 acres.	2.2.3		1	X	\$1,200	\$1,200
	B	If Common Drainage is less than 10 acres	N/A	2.2.3			X	\$600	\$0
32		Failure to minimize sediment trackout in accordance with Permit requirements. (Count each failure as one violation.)	N/A	2.2.4.a-c			X	\$600	\$0
33		Failure to properly manage stockpiles or land clearing debris piles composed of sediment and/or soil. (Count each failure as one violation.)	N/A	2.2.5.a-d			X	\$600	\$0
34		Failure to minimize dust through appropriate application of water or other dust suppression techniques. (Count each failure as one violation.)	N/A	2.2.6			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>
35		Failure to minimize disturbances of "steep slopes". (Count each failure as one violation.)	The inspection report states that rill erosion was evident along one of the site's steep embankments that was upstream of the turbid runoff identified in the 9/28/2019 complaint. Brian Levo's review confirms this.	2.2.7		1	X	\$600	\$600
36		Failure to preserve native topsoil (unless infeasible). (Count each failure as one violation.)	N/A	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.)	N/A	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.)	N/A	2.2.10.a			X	\$600	\$0
39		Failure to use erosion controls and velocity dissipation devices within and along the length of any stormwater conveyance channel and at any outlet to slow down runoff to minimize erosion. (Count each failure as one violation.)	N/A	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.)	N/A	2.2.12.a-e			X	\$1,200	\$0

			Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
41		Failure to comply with Permit requirements for use of treatment chemicals.- (Count each failure as one violation.)	N/A	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.)	N/A	2.2.14.a			X	\$600	\$0
43		Final Stabilization Criteria not achieved as required.	N/A	2.2.14.b				\$1,200	\$0
44		Other needed control measures not properly selected or installed. (Each omission is 1 violation. )	N/A	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.)	N/A	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.	N/A	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.	N/A	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.	N/A	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.	N/A	2.3.4.a-c			X	\$600	\$0
50		Failure to comply with requirements for application of fertilizers.	N/A	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.	N/A	2.4			X	\$600	\$0
<b>SMALL BUSINESS EVALUATION</b>									

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total
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.							
<b>TOTAL EXPEDITED SETTLEMENT:</b>							<b>\$16,260</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: On July 13, 2017, Region 10 filed a consent agreement and final order (CWA 10-2017-0038) resolving violations of the Clean Water Act by Aspen Homes. The company agreed to pay a penalty of \$11,000.			0.25	X	\$16,260	\$4,065
<b>FINAL TOTAL EXPEDITED SETTLEMENT FOR REPEAT VIOLATOR:</b>							<b>\$20,325</b>	