

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.      Laboratory Services Division  
Denver, Colorado 80246-1530      8100 Lowry Blvd.  
Phone (303) 692-2000      Denver, Colorado 80230-6928  
Located in Glendale, Colorado      (303) 692-3090  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

July 13, 2011

Michel & McQuain, LLC, Registered Agent  
Blue Sky Global, LLC  
P.O. Box 409  
Winter Park, Colorado 80482

**Certified Mail Number: 7006 2760 0003 4263 9441**

**RE: Expedited Settlement Agreement, Number: ES-110713-1  
CDPS Permit No: COR-03E512**

Dear Sir or Madam:

Enclosed for your records you will find Blue Sky Global, LLC's copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, Blue Sky Global, LLC must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division—and any subsequent installments as specified in the ESA—in order for this matter to be resolved.

If you have any questions, please don't hesitate to contact Michael Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Russell Zigler, Legal Assistant  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

cc: Park County Environmental Health Department

ec: Natasha Davis, EPA Region VIII  
Gary Beers, Permits Unit, CDPHE

*Enclosure(s)*



Colorado Department of Public Health & Environment  
Water Quality Control Division

## EXPEDITED SETTLEMENT AGREEMENT

Number: ES-110713-1

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Expedited Settlement Agreement (“ESA”), pursuant to the Division’s authority under §§25-8-602, 25-8-605 and 25-8-608, C.R.S. of the Colorado Water Quality Control Act (the “Act”) §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Blue Sky Global LLC (“Blue Sky”). The Division and Blue Sky may be referred to collectively as “the Parties.”

1. Blue Sky is a “person” as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
2. Blue Sky was conducting construction activities associated with the Alma Super Storage facility located in or near the Town of Alma, Park County, Colorado (the “Project”).
3. Blue Sky failed to comply with the provisions of its Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (the “Permit”), Certification Number COR-03E512, as described in the attached inspection report (Attachment A).
4. The parties enter into this ESA in order to resolve the matter of civil penalties associated with the violation(s) alleged herein and in the attached inspection report for a penalty of \$7,000.00.
5. By accepting this ESA, Blue Sky neither admits nor denies the violations or deficiencies specified herein and in the attached inspection report.
6. Blue Sky certifies that all deficiencies identified in the attached inspection report have been corrected and that the Project is currently in full compliance with the terms and provisions of the Permit. Additionally, Blue Sky has attached to this ESA: (1) a written description detailing how the deficiencies were corrected; and (2) representative photographs documenting the current conditions and the associated BMPs implemented at the Project.
7. Blue Sky agrees to the terms and conditions of this ESA. Blue Sky agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602, 25-8-605 and 25-8-608, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, Blue Sky waives: (1) the right to contest the finding(s) specified herein and in the attached inspection report; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.
8. This ESA is subject to the Division’s “Public Notification of Administrative Enforcement Actions Policy,” which includes a thirty-day public comment period. The Division and Blue Sky each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.

9. This ESA constitutes a final agency order or action upon the date when the Executive Director or his designee signs the ESA and effectively imposes the civil penalty.
10. Blue Sky agrees to make the penalty payment of \$7,000.00 through three installment payments as described in the table below:

Payment	Amount	Due Date
1	\$2,334.00	Within fifteen (15) calendar days of receiving the signed and final ESA from the Division.
2	\$2,333.00	January 1, 2012
3	\$2,333.00	July 1, 2012

Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris  
 Colorado Department of Public Health and Environment  
 Water Quality Control Division  
 Mail Code: WQCD-CAS-B2  
 4300 Cherry Creek Drive South  
 Denver, Colorado 80246-1530

11. Notwithstanding paragraph 5 above, the violations described in this ESA will constitute part of Blue Sky's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Blue Sky. Blue Sky agrees not to challenge the use of the cited violations for any such purpose.
12. This ESA, when final, is binding upon Blue Sky and its corporate subsidiaries or parents, their officers, directors, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

**ACCEPTED BY BLUE SKY GLOBAL LLC:**

  
 Signature \_\_\_\_\_ Date 5-6-11

KURT L. AVE  
 Name (printed) \_\_\_\_\_ Title President

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:**

*Lori M. Gerzina*

Date:

*July 13, 2011*

Lori M. Gerzina, Section Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION

Attachment A  
STATE OF COLORADO

Bill Ritter, Jr., Governor  
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division  
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Colorado Department  
of Public Health  
and Environment

August 12, 2010

Kurt L Ave, President  
Blue Sky Global  
PO Box 7399 PMB 193  
Breckenridge, CO 80424

RE: Facility Inspection/**Compliance Advisory**  
Alma Super Storage  
CDPS Permit No. COR-03E512  
Park County

Dear Mr. Ave,

An inspection of the above-referenced facility was conducted by the WQCD on July 14, 2010. The inspection procedure consists of two parts: a review of records, and an on-site facility inspection. Findings associated with the inspection are detailed in the enclosed inspection report. The Water Quality Control Division (the Division) expects you to correct the findings noted in the enclosed inspection report and submit an explanation on how each finding was corrected. Pursuant to Part II.B.2 of the Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (the permit) you must submit the requested materials to the Colorado Department of Public Health and Environment, WQCD-P-B2, 4300 Cherry Creek Drive South, Denver, CO 80246-1530, Attn: Nicole Rolfe, by **August 30, 2010**.

This Compliance Advisory is intended to advise you of possible violations of the Colorado Water Quality Control Act, its implementing regulations and permits, so that you may take appropriate steps to avoid or mitigate formal enforcement action. This Compliance Advisory does not constitute a Notice of Violation or Cease and Desist Order and is not subject to appeal. However, the issuance of this Compliance Advisory does not limit or preclude the Division from pursuing its enforcement options. The Division is currently evaluating the facts and if a formal enforcement action is deemed necessary, you may be issued a Notice of Violation / Cease and Desist Order that may include the assessment of penalties.

If you have any questions, please call me at (303) 692-3217.

Sincerely,

Nicole Rolfe  
Environmental Protection Specialist  
Colorado Water Quality Control Division

Enclosures

cc: Aaron Urdiales, EPA region 8  
Kirk Mickelsen, Blue Sky Global  
Park County Health Department  
File Copy

# Attachment A

## Stormwater Inspection Report

<b>Permittee:</b> Blue Sky Global	<b>Cert. No.</b> COR03E512	<b>Date(s):</b> July 14, 2010
<b>Facility:</b> Alma Super Storage	<b>Industrial Type:</b> Construction	<b>Receiving Water:</b> Middle Fork South Platte River
<b>Facility Address:</b> 54854 Highway 9 Alma, CO 80420		
<b>Persons present:</b> Kirk Mickelsen (Member Manager, Blue Sky Global) and Jessica Moidel (Manager of Alma Super Storage)		
<b>Legally Responsible Person(s)/Title(s):</b> Kurt L Ave (President, Blue Sky Global)	<b>Inspector(s)</b> Nicole Rolfe (WQCD)	

### Inspection Findings

The Water Quality Control Division (Division) inspector held a closing conference at the conclusion of the inspection. During the closing conference, the inspector reviewed the inspection findings with the facility representative and instructed the representative to correct all findings. Pursuant to all provisions of the Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (the Permit), the findings below must be corrected.

#### Records Review

Note: The permit certification effective date was 11/04/2008 and the date that ground disturbing activities began was 11/05/2008 as provided by Kirk Mickelson during the inspection.

Note: In a communication with the permittee prior to the inspection, the Division inspector requested that a copy of the Stormwater Management Plan (SWMP) and inspection records be provided to Division personnel at the inspection. The following documents were provided to the Division inspector on 7/14/2010:

- C4 of 6, titled, "Overall Site Plan with Existing & Proposed Grades"
- C5 of 6, titled, "Erosion Control Plan"
- C6 of 6, titled, "Erosion Control Details"
- "Subsoil Study for Foundation Design"

1. Documents C4 of 6 and C5 of 6 are maps of the facility with Best Management Practices (BMPs) identified. These two documents have been reviewed and will be considered to be a part of the SWMP for this facility. Documents C4 of 6 and C5 of 6 will be used to determine compliance with the Site Map component of the SWMP. Findings associated with the review of these materials, with respect to compliance with the Site Map component of the SWMP, are included in Finding 2 of this inspection report.

Document C6 of 6 is a generic plan discussing erosion control practices for a construction site in the Town of Parker. Document C6 of 6 is not associated with the stormwater management system for discharges of stormwater associated with construction activities at the Alma Super Storage facility, and did not contain content meeting the SWMP requirements for this facility. Therefore, Document C6 of 6 will not be considered to be a part of the SWMP for this facility.

The "Subsoil Study for Foundation Design" was developed in order to provide geo-technical recommendations for the design of the storage building's foundation. The Subsoil Study for Foundation Design is not associated with the stormwater management system for discharges of stormwater associated with construction activities at the Alma Super Storage facility, and did not contain content meeting the SWMP requirements for this facility. Therefore, the Subsoil Study for Foundation Design will not be considered to be part of the SWMP for this facility.

In conclusion, the SWMP for this facility only consists of a Site Map, represented by Documents C4 of 6 and C5 of 6. Therefore, the SWMP does not contain a section for Site Description, Stormwater Management Controls, Final Stabilization and Long-term Stormwater Management, and Inspection and Maintenance as required by Part I.C.1, Part I.C.3, Part I.C.4, and Part I.C.5 of the permit.

2. Documents C4 of 6, and C5 of 6 were reviewed to determine compliance with the SWMP Site Map requirements and found to be inadequate for the following reasons:
  - a) The SWMP Site Map did not identify all areas of ground surface disturbance as required by Part I.C.2.b of the permit. The SWMP site map must be updated to include this information.
  - b) The SWMP Site Map did not identify areas of cut and fill as required by Part I.C.2.c of the permit. The SWMP site map must be updated to include this information.
  - c) The SWMP Site Map indicates the disturbed slope located on the eastern boundary of the site and portions of the disturbed slope located on the western boundary of the site will be seeded and mulched. However, it was noted during the inspection that neither the disturbed slope located on the eastern and western boundary of the site were seeded nor mulched. The SWMP site map must be updated to identify current non-structural BMPs being implemented on the site.
  - d) The SWMP Site Map indicates that vehicle tracking control is installed at the entrance to the facility. However, it was noted during the inspection that vehicle tracking control was not installed at the entrance to the facility. The SWMP site map must be updated to identify current structural BMPs being implemented on the site.
3. Inspection records were not available at the inspection and inspections had not been performed, as provided by Kirk Mickelsen during the inspection. Inspections must be conducted as required by Part I.D.6 of the Permit. If inspections were not conducted for this facility then a written explanation as to why inspections were not conducted must be submitted to the Division, including a description of what steps will be taken to ensure that inspections are conducted in the future. If inspections have been conducted for this facility then you must submit copies of the inspection records to the Division.

### **Facility Inspection**

Notes: All BMPs mentioned in the below findings must be installed according to specifications and design criteria outlined in the SWMP. These specifications and design criteria must meet best engineering practice requirements.

4. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from the areas of disturbance along the eastern side of the project boundary (photo 1 and 2), the stockpiles of soil located near the south eastern section of the construction site (photo 3 and 4), and areas of disturbance along the north, north-eastern side of the project boundary (photo 5). Erosion rills were observed along the eastern disturbed slope (photo 1). Stormwater runoff from the disturbed areas identified above all drains to the north and discharges through a culvert to a retention pond. Straw wattles were installed down gradient of this drainage area in front of the culvert that drains to a retention pond (photo 5). The SWMP did not identify installation and implementation specifications for the straw wattles. The straw wattles were not installed following good engineering, hydrologic and pollution control practices. According to good engineering, hydrologic and pollution control practices, straw wattles must be trenched in the ground and staked through the wattle in order to create a seal with the ground to prevent undercutting. The installed straw wattles were not trenched nor were they staked through the wattle (photos 5 and 6). All BMPs must be implemented according to installation and implementation specifications outlined in the SWMP. All installation and implementation specifications outlined in the SWMP must follow good engineering, hydrologic and pollution control practices. In addition, the straw wattles were not inspected and maintained in good and effective operating condition. The portion of the straw wattle located west of the culvert was ripped (photo 6). All BMPs must be inspected and maintained in good and effective operating condition.

5. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from the areas of disturbance along the eastern side of the project boundary (photo 1 and 2), the stockpiles of soil located near the south eastern section of the construction site (photo 3 and 4), and areas of disturbance along the north, north-eastern side of the project boundary (photo 5). Erosion rills were observed along the eastern disturbed slope (photo 1). Stormwater runoff from the disturbed areas identified above all drains to the north and discharges through two culverts to a retention pond. The retention pond was not installed according to installation and implementation specifications outlined in the SWMP. The retention pond was not constructed to match the width, length, shape, or depth that is specified on the SWMP site map (photo 7). Additionally, the retention pond spillway was not constructed to match the installation detail provided on the SWMP site map as the spillway was not installed using rip rap as identified in the detail. It was not clear as to whether the design of the retention pond that is currently implemented on site to manage stormwater runoff was designed according to good engineering, hydrologic pollution control practices. If the retention pond is going to be utilized as a BMP to manage stormwater runoff from the site, then installation and implementation specifications for this pond must be included in the SWMP. All installation and implementation specifications for BMPs implemented on site must be in accordance with good engineering, hydrologic and pollution control practices.
6. It was noted during the inspection that inadequate BMPs were implemented to manage stormwater runoff from the disturbance along the west side of construction boundary. Stormwater runoff from this disturbed area drains to the northwest to a roadside drainage ditch. A series of erosion straw wattles were installed along the western boundary to manage the stormwater runoff from the disturbed area identified above. The straw wattles were not installed according to good engineering, hydrologic, and pollution control practices. The straw wattles were not properly abutted as there were gaps between where one wattle ends and another wattle begins (photo 8). In addition, the straw wattles were not installed on the drainage contour and were not properly staked (photo 9). As a result, there was evidence of a discharge of sediment beyond the straw wattles and deposited offsite into the roadside ditch located west of the construction site boundary, adjacent to Highway 9 (photo 15). The roadside ditch discharges to the Middle Fork South Platte River located approximately 600 feet to the south. All BMPs must be implemented according to installation and implementation specifications outlined in the SWMP. All installation and implementation specifications outlined in the SWMP must follow good engineering, hydrologic and pollution control practices.
7. It was noted during the inspection that BMPs were not implemented to manage the stormwater runoff from the drivable surfaces located on the west side of the constructed storage facilities, including the entrance. The drivable surfaces were constructed out of a loose road base material that was highly erodible. The road base was comprised of loose dirt, fines, and some aggregate. Stormwater runoff from these drivable surfaces drains to the west and to the northwest side of the construction site boundary, to a roadside drainage ditch. There was evidence of erosion occurring on the drivable surface located at the southeast and northeast side of the entrance gate (photos 10, 11 and 12). As a result, there was a discharge of sediment into the roadside ditch identified in Finding 6 (photo 15). BMPs must be implemented to manage stormwater runoff from all potential pollutant sources. All BMPs must be implemented according to installation and implementation specifications outlined in the SWMP.
8. It was noted during the inspection that BMPs were not implemented to manage stormwater runoff from the disturbed slope located on the northwest side the construction site, north of the entrance (photos 13 and 14). There was evidence of erosion and a discharge of sediment from the disturbed slope into the roadside drainage ditch identified in Finding 6 (photos 14 and 15). BMPs must be implemented to manage stormwater runoff from all potential pollutant sources. All BMPs must be implemented according to installation and implementation specifications outlined in the SWMP.

Site Photographs: Alma Super Storage

Photograph date: July 14, 2010



Photo 1: Land disturbance along the east side of the project boundary. Rill erosion is evident throughout the slope disturbance. The stormwater drains to the north and into the retention pond.

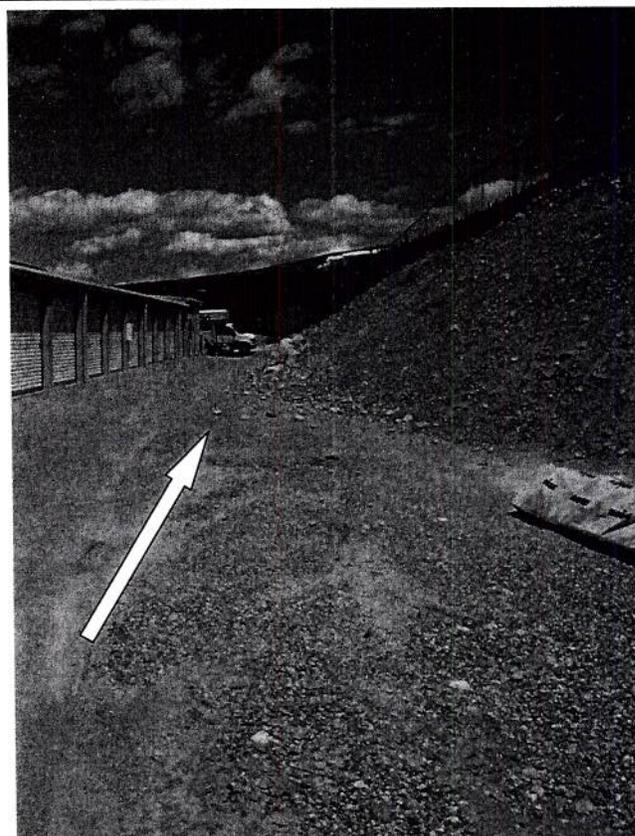


Photo 2: Land disturbance along the east side of the project boundary. The stormwater drains to the north, as indicated by arrows, and into the retention pond.

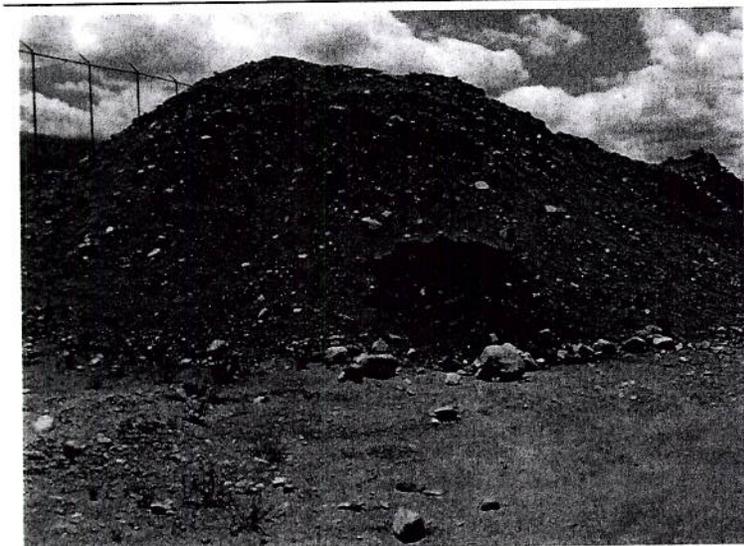


Photo 3: Soil stockpiles located along the south east portion of the construction area. The stormwater drains to the north and into the retention pond.

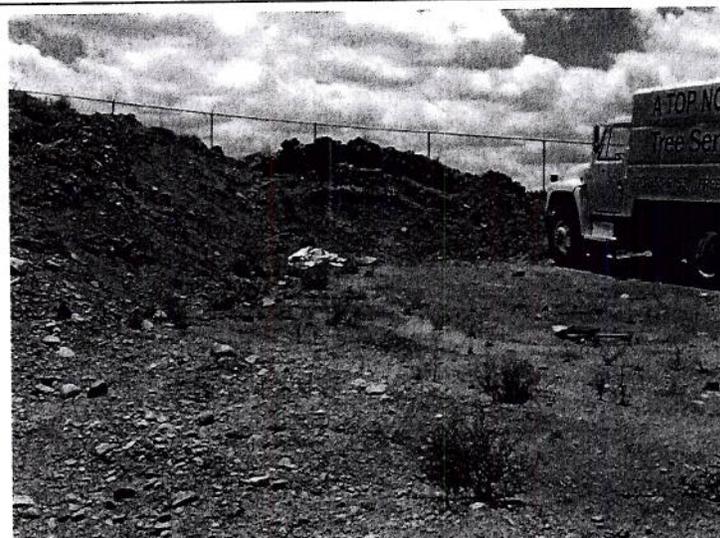


Photo 4: Soil stockpiles located along the southeast portion of the construction area. The stormwater drains to the north and into the retention pond.

**Site Photographs: Alma Super Storage**

**Photograph date: July 14, 2010**

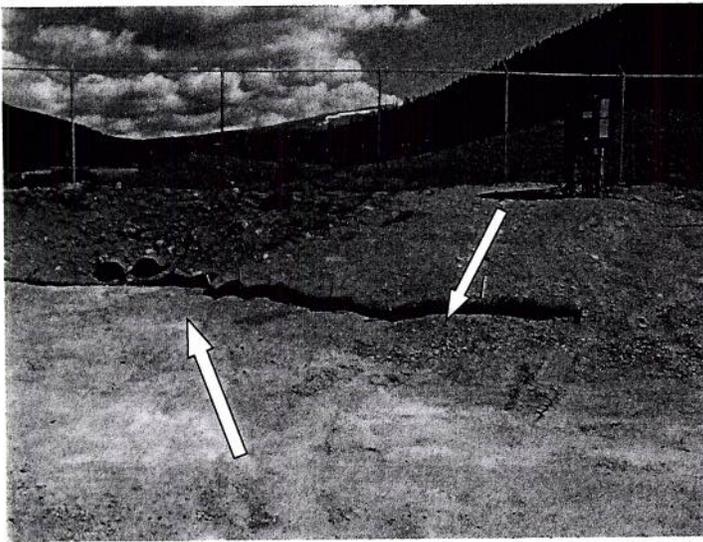


Photo 5: Land disturbance along the north, north-eastern side of the construction site. The stormwater drains to the north, as indicated by the arrows, and into the retention pond. The straw wattle is not trenched and the stakes are not through the straw wattle.

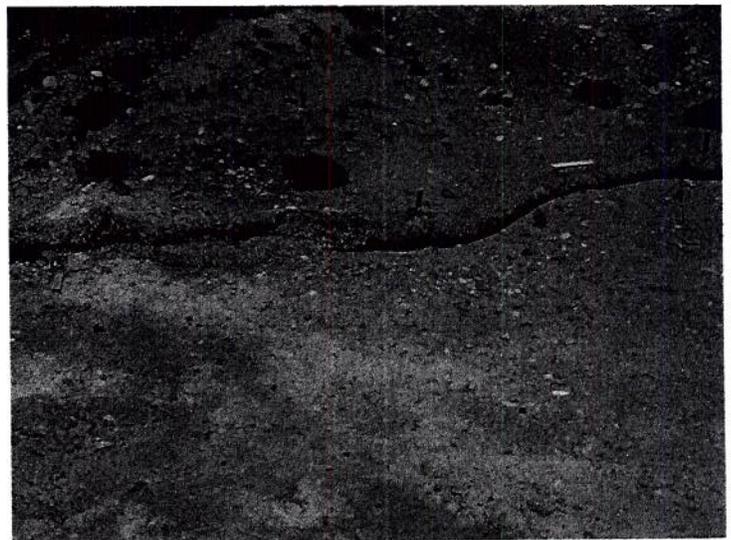


Photo 6: Western portion of straw wattle identified in photo 5. Straw wattle not trenched, stakes are not through the straw wattle, and straw wattle is not being maintained.



Photo 7: Retention pond located on the north side of project boundary is not installed according to installation detail provided in SWMP site map.

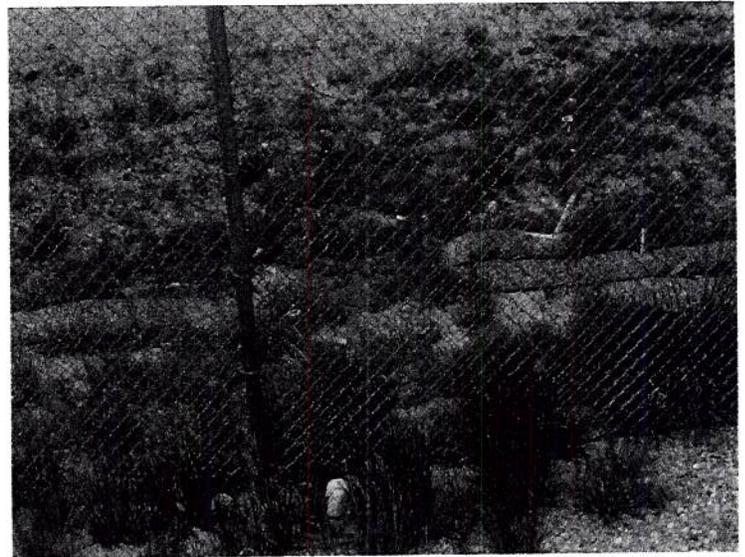


Photo 8: Erosion straw wattles along the western side of the construction boundary are not installed correctly as there are gaps between the wattles and the wattles are not properly staked.

Site Photographs: Alma Super Storage

Photograph date: July 14, 2010

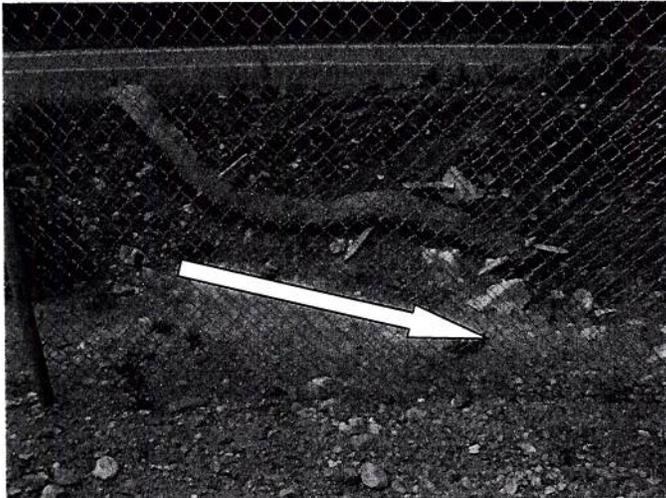


Photo9: Erosion straw wattle along the western side of the construction boundary are not trenched and are not staked. The stormwater drains to the north, as indicated by the arrows, to roadside drainage ditch.

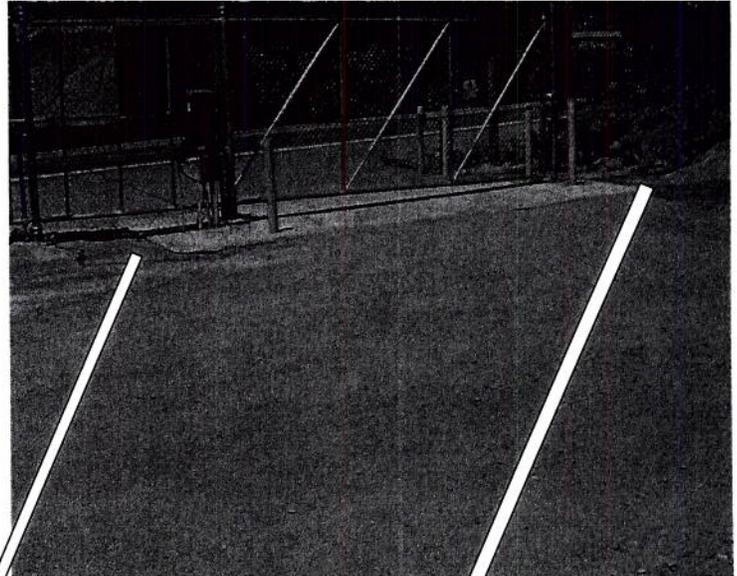


Photo 10: Failure to implement BMPs to manage stormwater runoff from the drivable surfaces at the entrance and along the west side of the construction site.

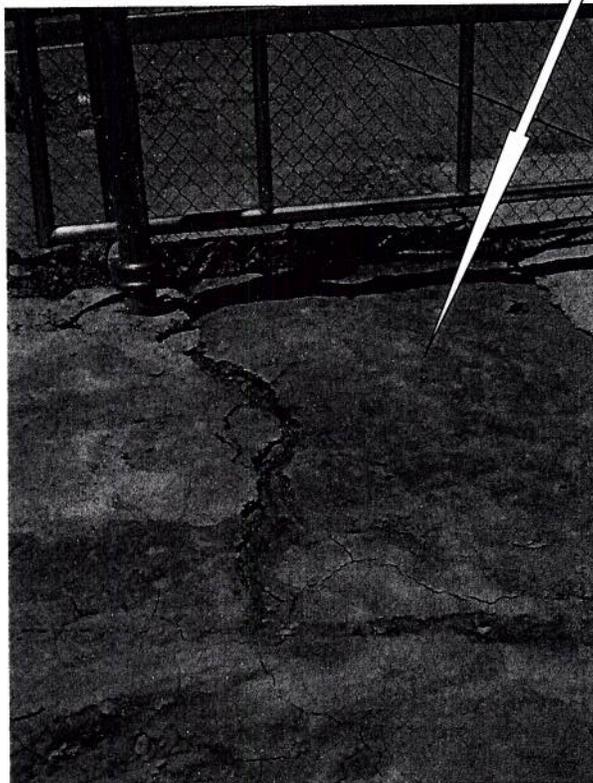


Photo 11: Failure to implement BMPs to manage stormwater runoff from the drivable surfaces. Close up of Photo 9 showing erosion along the southern portion of the entrance.

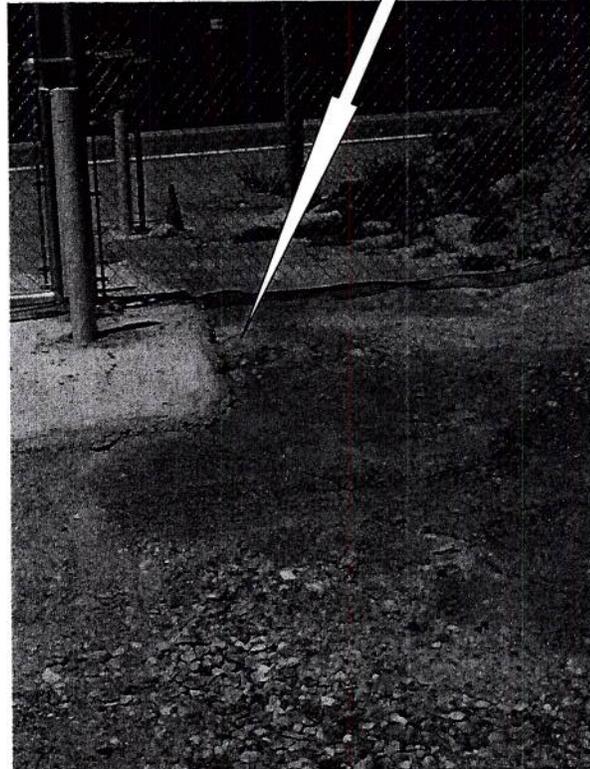


Photo 12: Failure to implement BMPs to manage stormwater runoff from the drivable surfaces. Close up of Photo 9 showing erosion along the northern portion of the entrance.

Site Photographs: Alma Super Storage

Photograph date: July 14, 2010



Photo 13: Failure to implement BMPs for disturbed soils north of the exit/entrance



Photo 14: Failure to implement BMPs for disturbed soils north of the entrance (close up of photo 13) north of the entrance.

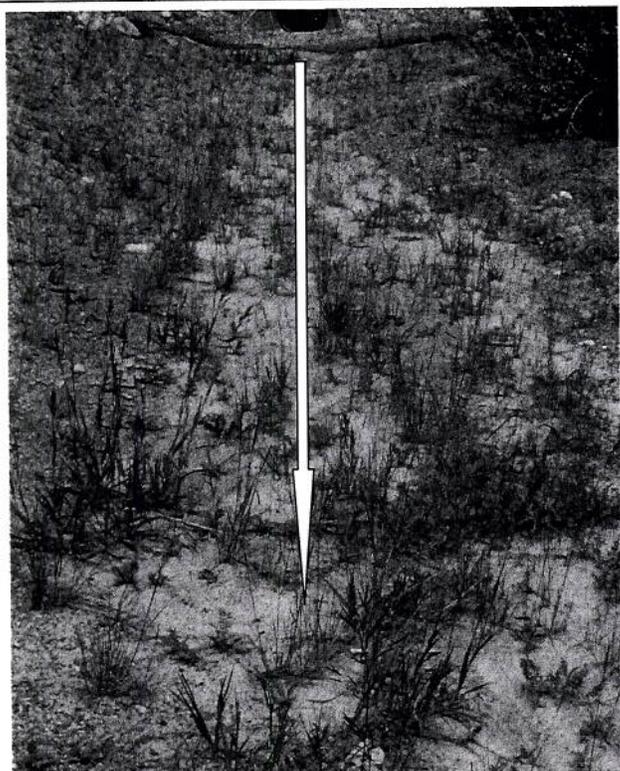


Photo 15: Sediment in the roadside drainage ditch located east of Highway 9 and west of construction site. Ditch ultimately flows to the North Fork of S. Platte River approximately 600 feet to the south.