



COLORADO
Department of Public
Health & Environment

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

November 24, 2014

Dave Seagraves, Regional Project Manager
Kroger Co
65 Tejon Street
Denver, CO 80223

Certified Mail Number: 7005 1820 0000 3208 7137

**RE: Expedited Settlement Agreement
City Market Fuel 443 / CDPS Permit Certification # COR-03L668**

Dear Mr. Seagraves:

Enclosed for your records is Kroger Co's copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was revised to reflect the correct ESA Number.

As specified in paragraph ten of the enclosed ESA, Kroger Co must, within fifteen calendar days, submit a certified or cashier's check for the amount specified in paragraph four of the ESA to the Water Quality Control Division in order to resolve the matter.

If you have any questions, please do not hesitate to contact me at (303) 692-2271 or lindsay.ellis@state.co.us.

Sincerely,

Lindsay Ellis, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosures

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Joshua Williams, Garfield County Public Health Service
Ryan Salber, Mark Young Construction, Inc.
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Unit 1, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Michael Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE



Colorado Department of Public Health & Environment
Water Quality Control Division

EXPEDITED SETTLEMENT AGREEMENT

Number: ES-141124-1

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 (“Act”) §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the Kroger Co. The Division and Kroger Co may be referred to collectively as “the Parties.”

1. Kroger Co 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. Kroger Co was conducting construction activities at the City Market Fueling Station, located in or near the City of Rifle, Garfield County, Colorado (“Project”).
3. Kroger Co, as described in the attached inspection report, failed to comply with the provisions of its Colorado Discharge Permit System General Permit for Stormwater Discharges Associated with Construction Activity (“Permit”), Certification Number COR-03L668.
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 \$3,812.50.
5. By accepting this ESA, Kroger Co neither admits nor denies the violations or deficiencies specified herein and in the attached inspection report.
6. Kroger Co 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, Kroger Co 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. Kroger Co agrees to the terms and conditions of this ESA. Kroger Co 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, Kroger Co 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 Kroger Co 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. Kroger Co agrees that within fifteen (15) calendar days of receiving the signed and final ESA from the Division, Kroger Co shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the amount specified in paragraph 4 above, to:

Lindsay Ellis
 Colorado Department of Public Health and Environment
 Water Quality Control Division
 Mail Code: WQCD-CWE-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 Kroger Co'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 Kroger Co. Kroger Co agrees not to challenge the use of the cited violations for any such purpose.
12. This ESA, when final, is binding upon Kroger Co and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

ACCEPTED BY KROGER CO:

 _____
 Signature 8/29/14 Date

David A. Seagraves _____
 Name (printed) Regional Project Manager Title

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:

 _____
 Date: 11/24/14

Ron Falco, P.E., Acting Director
 WATER QUALITY CONTROL DIVISION

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

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

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Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

www.colorado.gov/cdphe



Colorado Department
of Public Health
and Environment

May 28, 2014

CERTIFIED NO: 7007 0220 0001 0163 0766

Dave Seagraves, Regional Project Manager
Kroger CO.
65 Tejon St.
Denver, CO, 80223
dave.seagraves@kroger.com

Re: Facility Inspection /**Compliance Advisory**
The Kroger Company—City Market #443 project
CDPS Permit No. COR03L668
Garfield County

Dear Mr. Seagraves:

An inspection of the above-referenced facility was conducted by the Water Quality Control Division (the Division) on April 15, 2014. The inspection procedure consists of two parts: a review of records, and an on-site facility inspection. Findings identified during the inspection are detailed in the enclosed inspection report. This correspondence documents:

1. the Division's expectations for correcting the inspection findings;
2. the Division's determination on whether the findings meet established criteria for formal enforcement; and
3. whether the Division requires a response to the inspection report.

Corrective action

All discharges authorized by the Colorado Discharge Permit System (CDPS) General Permit for Stormwater Discharges Associated with Construction Activity (COR030000) (the permit) must be consistent with all requirements, and terms and conditions of the permit. Therefore, the Division expects The Kroger Company (the permittee) to correct all findings identified in the enclosed inspection report and return the facility to compliance with the permit. A violation of the terms and conditions specified in this permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S.. Correcting a permit violation does not remove the original violation.

Compliance determination

The Division evaluated the inspection findings against the Division's Stormwater Enforcement Response Guide and has determined that the findings identified in the enclosed inspection report **meet** the criteria for a formal enforcement response. The following discussion provides the Division's expectation for the inspected entity's response to the inspection report, and information regarding response adequacy and future Division communication.

- a. Consistent with section 61.8(3) of 5 CCR 1002-61 (Regulation No. 61) and Part II.B.2 of the CDPS General Permit for Stormwater Discharges Associated with Construction Activity, the inspected entity must submit a response to the Division that documents the corrective action(s) implemented for each finding identified in the enclosed inspection report. Unless specifically requested by the Division, the inspected entity is not required to submit a copy of the revised Stormwater Management Plan with the response. The

inspected entity must submit the response to the Colorado Department of Public Health and Environment, WQCD-P-B2, 4300 Cherry Creek Drive South, Denver, CO 80246-1530, Attn: Joe Campbell, by **June 11, 2014**.

- b. The inspected entity is encouraged to provide any additional information they feel should be considered by the Division with respect to any finding identified in the enclosed inspection report. The Division will evaluate this information, and may modify the Compliance Determination if the information demonstrates the finding was not accurate.
- c. Following receipt and review of the inspected entity's response (as identified in a. above), the Division will identify whether all inspection findings were adequately addressed and whether there is, or is not, evidence of continuing noncompliance and potential for continued penalty liability for ongoing violations. The Division intends to communicate this determination, in writing, within 30 days following the receipt of an inspected entity's response, or will provide a revised schedule if additional time is required to complete the Division evaluation. If the Division determines the inspection findings have not been adequately addressed, the Division response will provide notification of the continued noncompliance and the need for corrective action.
- d. The Division's standard enforcement response process includes the issuance of a Notice of Violation/Cease and Desist Order. The Division has an internal time control goal of 180 days to issue a formal enforcement action for identified noncompliance meeting the established criteria for formal enforcement. If the Division determines that it will not meet its internal time control goal, the Division will provide written notification to the permittee within 180 days of the date of the inspection. If, at any time, the Division determines that it will forego a formal enforcement response for the identified noncompliance, the Division will provide written notification to the permittee at the time that decision is made.

This Compliance Advisory is intended to advise the inspected entity of alleged violations of the Colorado Water Quality Control Act, its implementing regulations and permits so that appropriate steps can be taken to avoid or mitigate formal enforcement action or to correct our records (if applicable). This Compliance Advisory does not constitute a Notice of Violation or Cease and Desist Order and is not subject to appeal. The issuance of this Compliance Advisory does not limit or preclude the Division from pursuing its enforcement options concerning the above violation(s). The Division will evaluate the facts associated with the above-described violation(s) and if a formal enforcement action is deemed necessary, the inspected entity 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) 692-2356.

Sincerely,



Joe Campbell
Environmental Protection Specialist
Compliance Assurance Unit
WATER QUALITY CONTROL DIVISION

cc: Garfield County Public Health Service
File Copy

Stormwater Inspection Report

Permittee: The Kroger Company	Cert. No. COR03L688	Date: 4/15/2014
Facility: City Market Fuel #443	Industrial Type: Construction	Receiving Water: City of Rifle MS4 – Colorado River
Facility Address: 1405 Railroad Avenue, Rifle, Garfield County, Colorado		
Persons Present: Joe Campbell, Rik Gay (CDPHE – Water Quality Control Division), Ryan Salber, Steve Derks (Mark Young Construction)		
Legally Responsible Person/Title: Dave Seagraves, Regional Project Manager – Facility Engineering	Inspector: Joe Campbell & Rik Gay (CDPHE – Water Quality Control Division)	

Inspection Findings

The Water Quality Control Division (Division) inspector held a closing conference at the conclusion of the inspection, during which the inspector reviewed all alleged inspection findings with the facility representative. The inspector communicated the Division's expectation that the facility representative initiate corrective actions, immediately, for all alleged inspection findings, in accordance with the provisions of the CDPS General Permit for Stormwater Discharges Associated with Construction Activity (the permit).

RECORDS REVIEW

Note 1: In a communication with the permittee prior to the inspection, the Division inspector requested that an additional copy of the Stormwater Management Plan (SWMP) and inspection records be provided to Division personnel at the inspection. An additional copy of the SWMP was provided to the Division inspector during the inspection.

Note 2: The permit certification effective date was January 28, 2014. The date that construction started and land-disturbing activities began at the site was February 10, 2014 as provided by Ryan Salber, superintendent.

1. A copy of the SWMP was retained onsite. The Division inspector reviewed the SWMP and found it to be inadequate for the following reasons:
 - a) The Site Description section of the SWMP did not adequately describe all items required by Part I.C.1 of the permit. Specifically, the description of the existing vegetation and the percentage of ground cover prior to when construction activities began at the project was not described. The SWMP shall clearly describe:
 - o A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.

The Division expects the permittee to update the Site Description to include all items as required by the permit.

INSPECTIONS

2. Inspection records were available and were reviewed during the inspection, but were inadequate as they were not conducted as required in Part I.D.6.b. of the permit (inspection records from February 13, 2014 through April 14, 2014 were reviewed by the inspectors), as provided below:
 - a) Inspections were not conducted consistent with the *Inspection Requirements (scope and documentation)* section of the Permit (Part I.D.6.b). Specifically, inspection reports that indicated that corrective actions be taken were not documented as being completed. At a minimum, the inspection report must include:
 - o Description of corrective action for items iii, iv, v, and vi, above, dates corrective action(s) taken, and measures taken to prevent future violations, including requisite changes to the SWMP, as necessary.

- After adequate corrective action(s) has been taken, or where a report does not identify any incidents requiring corrective action, the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief.

The Division expects the permittee to conduct and document site inspections as required by the permit.

SITE INSPECTION

Note 3 As required by Part I.D.2 of the permit, all Best Management Practices (control measures) mentioned in the following findings must be selected, installed, implemented and maintained according to good engineering, hydrologic and pollution control practices, and consistent with the installation and implementation specifications identified in the SWMP. These control measures must be adequately designed to provide control for all potential pollutant sources associated with the construction activity to prevent pollution or degradation of State waters.

Note 4: The findings identified below provide specific observations of field deficiencies. It remains the permittee's responsibility to ensure that all permit requirements, terms and conditions are met for the entire construction site.

1. It was noted during the inspection that a control measure was implemented on the eastern edge of the project to control stormwater pollution from concrete washout activities. However, there were multiple locations identified during the site inspection that this control measure was not being utilized consistently throughout the project.
 - Pollutant Source: Concrete washout waste.
 - Control Measure Observation / Deficiency: A designated concrete washout area control measure had been implemented at the eastern edge of the project. However, concrete waste and concrete washout was observed outside the designated concrete washout control measure implemented at the site (see photographs 1-4).
 - Control Measure Finding: An installation and implementation specification was provided in the SWMP but not implemented, including the following observations:
 - The SWMP directs washout of concrete trucks to be offsite or in designated areas only and concrete waste was observed outside the designated areas.
 - The SWMP directs to not allow excess concrete to be dumped on site, except in designated areas and concrete waste was observed dumped on the ground.
 - Stormwater runoff from the area is discharged as follows: Surface runoff from project is collected by storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. Stormwater run-off is directed to additional inadequate control measures prior to discharge (see finding 4).
 - Result: There was a potential discharge of pollutants to the following state water: Colorado River.
 - Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Implement control measures consistent with the implementation specifications provided in the SWMP.
 - The discharge of concrete washout waste must not leave the site as surface runoff or to surface waters.
 - All site wastes must be properly managed to prevent potential pollution of state waters. This permit does not authorize on-site waste disposal.

2. It was noted during the inspection that an inadequate control measure was implemented on the eastern edge of the project to control stormwater pollution from concrete washout activities.
- Pollutant Source: Concrete washout waste.
 - Control Measure Observation / Deficiency: A designated concrete washout control measure had been implemented to prevent concrete washout from entering the stormwater runoff (see photograph 5).
 - Control Measure Finding: An installation and implementation specification was provided in the SWMP but not implemented, including the following observations:
 - The SWMP directs that the concrete washout area be surrounded with undisturbed soil or a compacted berm and that the entrance either be stabilized or have a vehicle tracking control pad. Neither a stabilized entrance nor compacted berms were observed.
 - Stormwater runoff from the area is discharged as follows: Surface runoff from project is collected by storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. No additional control measures were implemented to manage runoff from the pollutant sources.
 - Result: There was a potential discharge of pollutants to the following state water: Colorado River.
 - Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Implement control measures consistent with the implementation specifications provided in the SWMP.
 - The discharge of concrete washout waste must not leave the site as surface runoff or to surface waters.
 - All site wastes must be properly managed to prevent potential pollution of state waters. This permit does not authorize on-site waste disposal.
3. It was noted during the inspection that an inadequate control measure was implemented on the eastern edge of the project to control vehicle tracking.
- Pollutant Source: Sediment from disturbed areas.
 - Control Measure Observation / Deficiency: A vehicle tracking control pad control measure had been implemented to prevent sediment from entering the roadway. However, sediment was observed on the paved surfaces at this location (see photographs 6-8).
 - Control Measure Finding: An installation and implementation specification was provided in the SWMP but not implemented, including the following observations:
 - The SWMP directs that the vehicle tracking control pad utilize coarse aggregate or 6" minus rock. It was observed that a finer, rounded aggregate was being utilized for the vehicle tracking control pad.
 - Stormwater runoff from the area is discharged as follows: Surface runoff from project is collected by storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. Stormwater run-off is directed to additional inadequate control measures prior to discharge (see finding 4).
 - Result: Sediment was observed to be tracked on the roadway and offsite. Therefore, there was a potential discharge of pollutants to the following state water: Colorado River.

- Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Implement control measures consistent with the implementation specifications provided in the SWMP.
 - Practices must be implemented for all areas of potential vehicle tracking, and can include: minimizing site access; street sweeping or scraping; tracking pads; graveled parking areas; wash racks; contractor education; and/ or sediment control BMP, etc.
4. It was noted during the inspection that inadequate control measures were implemented to manage stormwater runoff at the storm drain drop inlets at various locations throughout the project.
- Pollutant Source: Sediment from disturbed areas without implementation of additional sediment control measures.
 - Control Measure Observation / Deficiency: a straw wattle inlet protection control measure was implemented at storm drain drop inlets at various locations across the project to manage stormwater runoff from the above listed pollutant source (see photographs 9-10).
 - Control Measure Finding: An installation and implementation specification for straw wattles as inlet protection was not provided in the SWMP. The control measure was inadequate for the following reasons:
 - The contributing drainage area exceeded the capacity of the straw wattle control measure. According to the installation and implementation specification provided in the SWMP the allowable tributary drainage area per 100 linear feet of straw wattle is 0.25 acres.
 - The inlet protection does not provide a mechanism for pollutant removal from disturbed areas without additional sediment control measures. Specifically, the inlet protection does not contain capacity to allow for settling of sediment and does not provide filtering for the expected runoff volumes. Therefore, all runoff from disturbed areas must be directed through at least one up-gradient control measure designed and implemented for treatment of runoff from disturbed areas prior to the inlet protection.
 - Stormwater runoff from the area is discharged as follows: Surface runoff is collected by the storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. No additional control measures were implemented to manage runoff from the pollutant sources.
 - Result: There was a potential discharge of pollutants to the following State Water: Colorado River.
 - Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Implement control measures consistent with the implementation specifications provided in the SWMP.
 - Facilities must select, install, implement, and maintain appropriate control measures, following good engineering, hydrologic and pollution control practices.
 - Control measures implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of state waters.
 - Control measures must be implemented prior to discharge.
5. It was noted during the inspection that control measures were not implemented to manage stormwater runoff from the erodible soil stockpiles at the project.
- Pollutant Source: Soil stockpiles.

- Control Measure Observation / Deficiency: Control measures were not implemented to control stormwater runoff from the above listed pollutant sources (see photographs 11-12).
 - Stormwater runoff from the area is discharged as follows: Surface runoff is collected by the storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. Stormwater run-off is directed to additional inadequate control measures prior to discharge (see finding 4).
 - Result: There was a potential discharge of pollutants to the following state water: Colorado River.
 - Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Control measures must be implemented to manage stormwater runoff from all potential pollutant sources.
 - Implement control measures consistent with the installation and implementation specifications provided in the SWMP.
6. It was noted during the inspection that control measures were not implemented to manage stormwater runoff from the disturbed areas located at the perimeter of the project.
- Pollutant Source: Sediment from disturbed areas.
 - Control Measure Observation / Deficiency: Control measures were not implemented to control stormwater runoff from the above listed pollutant source. The SWMP identified a silt fence control measure for this pollutant source (see photographs 13-14).
 - Stormwater runoff from the area is discharged as follows: Surface runoff is collected by the storm drain inlets and discharges to the adjacent MS4 system and ultimately to the Colorado River. Stormwater run-off is directed to additional inadequate control measures prior to discharge (see finding 4).
 - Result: There was a potential discharge of pollutants to the following state water: Colorado River.
 - Expectations: The division expects the permittee to design and implement control measures, as required by the permit, and make the following corrections:
 - Control measures must be implemented to manage stormwater runoff from all potential pollutant sources.
 - Implement control measures consistent with the installation and implementation specifications provided in the SWMP.



Photograph 1: Concrete waste discharged to ground



Photograph 2: Concrete waste discharged to ground



Photograph 3: Concrete waste discharged to ground



Photograph 4: Concrete waste discharged to ground



Photograph 5: Concrete washout not installed according to detail in SWMP



Photograph 6: Vehicle tracking control pad not installed according to detail in SWMP



Photograph 7: Tracking of sediment offsite



Photograph 8: Tracking of sediment offsite



Photograph 9: Inadequate inlet protection straw wattles



Photograph 10: Inadequate inlet protection straw wattles



Photograph 11: Soil stockpile with no control measures and located an impervious surface.



Photograph 12: Soil stockpiles with no control measures and located an impervious surface.



Photograph 13: Inadequate perimeter controls.



Photograph 14: Inadequate perimeter controls.