

Memorandum

Florida Department of Environmental Protection

To: Janet G. Llewellyn, Director
Division of Water Resource Management

Through: Phil Coram, P.E., Deputy Director
Division of Water Resource Management

Richard D. Drenth, Chief
Bureau of Water Facilities Regulation

Gene Eric H. Livingston, Program Administrator
NPDES Stormwater Section

From: Jessica Kleinfelter, Compliance & Enforcement Manager
NPDES Stormwater Section

Subject: Case Report for Phoenix Construction Services, Inc. - Panama City - Bay
County International Airport (Facility), Facility ID - FLR10GI90

Date: February 16, 2010

ISSUE: Request for signature on a Case Report

SUMMARY:

On December 7, 2009, the Department conducted an enforcement meeting with Phoenix Construction Services, Inc. (Phoenix) representatives. Since that meeting, no progress has been made in settling this enforcement case. In late December 2009 and January/February 2010, multiple attempts were made to schedule a second meeting to discuss settlement specifically. Phoenix has requested significantly more time, prompting the development of this Case Report.

The Program (and attorney) would like to give Phoenix a set deadline to provide a substantive response to the violations themselves and file suit if that deadline is not met. This Case Report will allow OGC to file a lawsuit promptly should our negotiation attempts fail.

REQUEST:

Please sign the attached Case Report where indicated and call Robin Babin (850) 245-7522 for pick up when ready.

If you have any questions, please contact Jessica at 850-245-7589.

RECEIVED

FEB 23 2010

**NPDES
STORMWATER SECTION**

FEB 18 2010

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FEB 17 2010

DEPUTY DIRECTOR
DIV. OF WATER RESOURCE MANAGEMENT

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FEB 23 2010

Dept. of Environmental Protection
Bureau of Water Facilities Regulation

CASE REPORT
National Pollutant Discharge Elimination System (NPDES) Stormwater Section

Types of Violation: NPDES Stormwater (Construction Generic Permit), wetland fill and water quality

Date Submitted: February 16, 2010

1. VIOLATORS:

Phoenix Construction Services, Inc. (Permittee, primary contractor)
1805 Tennessee Ave.
Lynn Haven, FL 32444
Business Phone: (850) 265-4210

2. LOCATION OF VIOLATION:

Panama City - Bay County International Airport
West Bay, Bay County, Florida, 32413
Parcel number 32432-010-000
Latitude 30° 21' 28" North and Longitude 85° 47' 56" West

3. NATURE OF THE VIOLATION:

This case involves NPDES Stormwater permit violations at the site of the new Panama City - Bay County International Airport and follows a previous enforcement action against the Airport Board for water quality violations and wetland fill violations. Phoenix Construction Services, Inc., operates construction activities under the NPDES *Generic Permit for Stormwater Discharges Associated with Large and Small Construction Activities* ("CGP"), which became effective on December 20, 2007, and expires on December 19, 2012 (Facility ID: FLR10GI90). On April 16, 2009, the NPDES Stormwater program was informed that there were turbid discharges coming off the airport property. The Compliance and Enforcement ("C&E") Manager, Jessica Kleinfelter, inspected the site on April 23, 2009, and noted numerous BMP failures, evidence of turbid discharges, and sedimentation in wetlands.

1st Violation: **Failure to abide by permit.** Rule 62-620.300(6), F.A.C.
See Attachment I. Failure to abide by permit conditions is a violation of Rule 62-620.300(5), F.A.C., and Fla. Stat. 403.161(1)(b).

2nd Violation: **Water quality exceedances.** Rule 62-302.530, F.A.C.
See Attachment II. Morell Branch and Kelly Branch are Class III waters of the state. Exceedances are for turbidity. Water quality standard is 29 NTUs above background for Class III Waters of the State.

3rd Violation: **Filling without a permit.** Rule 62-312.060, F.A.C.

On April 23, 2009, the Department found that Phoenix filled approximately 6 acres within the landward extent of Waters of the State adjacent to Crooked and Burnt Mill Creeks and West Bay.

On September 17, 2009, the Department found that Phoenix had filled less than 0.1 acres in three locations: Kelly Branch permitted outfall, Kelly Branch south of permitted outfall, and Morell Branch around permitted outfall.

On October 27, 2009, the Department found that Phoenix had filled less than 0.1 acres in two locations: wetlands adjacent to the Utility Road and wetlands at the location of a fire hydrant discharge.

4. OTHER INFORMATION:

Phoenix has a history of non-compliance in Florida through EPA, for illegal dredge and fill, in 2001.

5. POTENTIAL WITNESSES:

Jessica Kleinfelter (inspected site, reviewed documents, assessed violations)
NPDES Stormwater, C&E Manager
2600 Blairstone Road., MS 2500
Tallahassee, FL 32399
Phone: (850) 245-7589

FDEP NW District staff, including: Kenneth Dickey, Sally Cooley, Thressa Berry, Dick Fancher, Darryl Boudreau, Michael Matthews, Barbara Ruth, Kenneth Prest
NW District Office* business address
160 Governmental Center, Suite 308
Pensacola, Florida 32502
Phone: (850) 595-8300

Terry Wells (inspected the site numerous times)
U.S. Army Corps of Engineers
41 North Jefferson St., Suite 111
Pensacola, FL 32502
Phone: (850) 433-8860

Roy Willett and Jeff Dealy
KBR
601 Jefferson Street, Suite 3400* business address
Houston, Texas 77002

Bill Lynn and Eric Schneider
PBS&J
5300 West Cypress Street, Suite 200* business address
Tampa, FL 33607

6. RECOMMENDATION FOR CORRECTIVE ACTIONS:

Corrective actions for Phoenix were addressed through the Airport Board's Consent Order. By the time litigation starts, the airport site will be nearly completed. Therefore, there are no known corrective actions needed.

7. SETTLEMENT NEGOTIATIONS:

On May 11, 2009, C&E sent Phoenix a Warning Letter requesting its Stormwater Pollution Prevention Plan ("SWPPP"), any SWPPP amendments, and inspection reports for the site from January 23, 2008, to current.

On September 17, C&E sent Phoenix the signed Civil Penalty Authorization Memo, authorizing \$1,720,499 in penalties for the violations outlined in Attachment I of this Report only.

On October 8, 2009, C&E and attorney meet with Phoenix and their attorney to discuss the nature of the violations. Settlement was not discussed in detail.

On December 10, 2009, following the withdrawal of Phoenix's initial attorney, C&E and attorney meet with Phoenix and their new attorney to discuss the nature of the violations. Settlement was not discussed in detail, though likely "defenses" were raised.

In late December 2009 and early January 2010, attempts were made to set a second meeting to discuss settlement specifically. Phoenix requested significantly more time, prompting the development of this Case Report.

8. ATTACHMENTS:

Attorney has all necessary documents at this time.

9. OTHER INFORMATION:

Phoenix's raised and/or likely defenses are: (1) Phoenix "relied" on our earlier inspection, for which we issued a "compliance" letter; (2) economic benefit costs were "delayed" not "avoided"; (3) our economic benefit calculation was too broad; (4) there doesn't seem to be a way to correlate the water quality violations with the insufficient/inaccurate inspections/reports and that some of those water quality were

CASE REPORT - ATTACHMENT I
National Pollutant Discharge Elimination System (NPDES) Stormwater Section

SWPPP Violations:

1. Failure to develop a SWPPP that meets the requirements V.D. of the CGP. Receiving waters were impacted significantly and the SWPPP was mostly out of compliance. For a detailed list, see Attachment III SWPPP Deficiencies.
2. Failure to implement a SWPPP that meets the requirements V.D. of the CGP. Receiving waters were impacted significantly and the SWPPP was not implemented as written. For a detailed list, see Attachment III SWPPP Deficiencies.
3. Ten instances where Phoenix failed to properly document SWPPP amendments according to V.C. of the CGP. The SWPPP amendments lacked required elements. For a detailed list, see Attachment IV SWPPP Amendments Deficiencies.

Inspection Violations: January 14, 2008 through June 8, 2009

4. Ninety-four instances where there existed BMP failures when Phoenix's Weekly/0.5" Rainfall Event Inspection reports noted none and where Phoenix failed to properly document site conditions in its Weekly/0.5" Rainfall Event Inspections for all locations and all BMPs as required by V.D.4. of the CGP.
5. Seven instances in which Phoenix failed to conduct or report a 0.5" Rainfall Event Inspection following a rainfall event of 0.5" or more, as required by section V.D.4. of the CGP.
6. Forty-six locations in which Phoenix failed to document on its Weekly/0.5" Rainfall Event Inspections the date and actions taken to ensure the proper operation of all BMPs, as required by V.D.4.c. of the CGP.

BMP Failures:

7. April 23, 2009: Twenty-four instances for BMP failures including: 14 large bare areas / unstabilized slopes, 3 areas of excessive sedimentation, 2 areas of significant erosion (rills and gullies), and 5 areas of silt fence, hay bale and turbidity curtain failures due to improper installation and maintenance.

CASE REPORT - ATTACHMENT II
National Pollutant Discharge Elimination System (NPDES) Stormwater Section

Date	Morell Branch NTUs above background	Rainfall data
3/18/2008	55	not reported
6/13/2008	187.6	1.5"
6/16/2008	83.5	2.5"
7/15/2008	78.02	5.75"
8/27/2008	103.2	4.5"
9/10/2008	38.41	.5"
10/6/2008	86.4	0
11/6/2008	30.17	0
12/15/2008	101.9	0
12/17/2008	45.06	0
12/23/2008	75	0
12/29/2008	49.3	0
2/11/2009	32	3.5"
3/31/2009	398.9	1.5"
4/4/2009	356.2	1.5"
4/6/2009	356	0
4/13/2009	296.1	5"
1/21/2010	780	
1/22/2010	150	
1/22/2010	60.7	
1/23/2010	102	
1/30/2010	46.8	
Date	Kelly Branch NTUs above background	Rainfall data
3/16/2008	88.1	0
3/18/2008	113	not reported
6/9/2008	40.93	.4"
6/13/2008	266.6	1.5"
6/16/2008	57.59	2.5"
8/15/2008	34.97	2.25"
8/27/2008	63.71	4.5"
9/3/2008	63.66	.5"
9/10/2008	63.55	.5"
10/9/2008	70.3	3.5"
10/10/2008	70	not reported
10/13/2008	36.69	0
10/20/2008	36.51	0
12/12/2008	46	not reported
12/12/2008	111	6.25"
12/15/2008	50.07	0
12/17/2008	30.99	0
3/31/2009	115	1.5"
4/4/2009	87.4	1.5"
4/6/2009	87	0
4/13/2009	32.3	5"

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	Other locations	
10/27/2009	35	Location: Old A
9/17/2009	73.29	Location: K
9/17/2009	53.6	Location: west of BMPs
12/2/2009	36.7	Location: K
12/2/2009	55.9	Location: K
12/3/2009	42.8	Location: D2