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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

DEC 10 2013

Ref: 8ENF-W-NP

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Judd P. Palmer  
Registered Agent  
JP Excavating, Inc.  
1906 S. Stone Canyon Dr.  
St. George, Utah 84790

Re: Proposed Assessment of Class I Civil  
Penalty under Section 309  
of the Clean Water Act  
Docket No. **CWA-08-2014-0008**

Dear Mr. Palmer:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Administrative Complaint and Notice of Opportunity for Hearing (Complaint) issued to JP Excavating, Inc. (JP Excavating). Based on its review of all available information, the EPA has determined that JP Excavating has violated Storm Water General Permit No. UTR30000, which was issued by the Utah Department of Environmental Quality (UDEQ).

The Complaint proposes a penalty of \$35,000 be assessed for failure to comply with the permit issued by UDEQ. JP Excavating has the right to a hearing to contest the factual allegations in the Complaint and/or the appropriateness of the proposed penalty. A copy of the procedures for such a hearing is enclosed for your review. Please especially note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38.

**If JP Excavating wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region 8 Hearing Clerk at the following address:**

Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202

If JP Excavating does not file an answer within 30 days (see 40 C.F.R. § 22.15(d)), it may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

As provided in 40 C.F.R. § 22.18(b), the EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Clean Water Act, the permit referenced above, and applicable regulations. Whether or not JP Excavating requests a hearing, it may confer informally with the EPA concerning the alleged violations or the proposed penalty amount. However, please note that a request for an informal conference does **not** extend the 30-day period for filing an answer and/or requesting a hearing.

If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by a JP Excavating representative and the delegated authority for the EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, JP Excavating will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed-upon penalty. JP Excavating has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with the EPA, but this is not required.

If you have any questions regarding this letter or the Complaint, or any other matters pertinent to compliance with the Clean Water Act, the most knowledgeable person on my staff regarding these matters is Natasha Davis, Technical Enforcement, at (303) 312-6225. If JP Excavating is represented by an attorney who has questions, please ask the attorney to call Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,



Gwenette C. Campbell, Unit Chief  
NPDES Enforcement Unit  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure: Administrative Complaint and Notice of Opportunity for Hearing, 40 CFR Part 22

cc: Tina Artemis, Regional Hearing Clerk  
Jeff Studenka, UDEQ  
Mike Evans, JP Excavating



5. Construction activities began at the Site in July of 2012.
6. Respondent has had day-to-day responsibility for construction at the Site.
7. The runoff and drainage from the Site constitutes “storm water” as defined by 40 C.F.R. § 122.26(b)(13).
8. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
9. Storm water, snow melt, surface drainage and runoff water have flowed from the Site into an unnamed tributary of the Virgin River, which is adjacent to the Site and which flows into the Virgin River approximately one mile south of the Site.
10. The Virgin River is a navigable-in-fact, interstate water.
11. The tributary mentioned in paragraph 9, above, flows at least seasonally.
12. The Virgin River is a “navigable water” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7), and a “water of the United States” as defined by 40 C.F.R. § 122.2.
13. The tributary mentioned in paragraph 9, above, is a “navigable water” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7), and a “water of the United States” as defined by 40 C.F.R. § 122.2.
14. Each discharge of storm water from the Site is a “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
15. Each discharge of a pollutant from the Site is a discharge from a “point source” as that term is defined by section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
16. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
17. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA (and states with authorization from the EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

18. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
19. The term “storm water discharge associated with industrial activity” includes, but is not limited to, any discharge from construction activity that disturbs at least five acres or that disturbs a piece of land that is less than five acres but is part of a larger common plan of development ultimately disturbing over five acres. 40 C.F.R. § 122.26(b)(14)(x).
20. Each person discharging storm water associated with industrial activity must seek and obtain authorization to do so under an individual or a general NPDES permit. 40 C.F.R. § 122.26(c); sections 301(a), 308, and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, and 1342(p).
21. The State of Utah was approved by the EPA to administer the NPDES program in 1987. 52 Fed. Reg. 27578-27579 (July 22, 1987). A permit issued by the State of Utah Department of Environmental Quality (UDEQ) under Utah’s EPA-approved NPDES program is known as a UPDES permit.
22. Effective July 1, 2008, the UDEQ issued a UPDES general permit, Permit No. UTR300000 (the Permit) authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. A discharger may apply for authorization to discharge under the Permit by submitting a notice of intent (NOI) for coverage to the UDEQ.
23. Section 3.1 of the Permit requires, that each permittee develop and implement an adequate storm water pollution prevention plan (SWPPP) prior to submitting an NOI. Among other things, the SWPPP must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the relevant construction site and must describe practices (referenced as Best Management Practices, or BMPs) to be used to reduce the pollutants in storm water discharges. The SWPPP must be implemented from the beginning of construction until final stabilization of the relevant site is complete.
24. On July 10, 2012, Respondent submitted an NOI to the UDEQ indicating Respondent’s intent to have discharges from the Site covered by the Permit. Effective July 10, 2012, Respondent was authorized to discharge storm water at the Site in accordance with the requirements of the Permit. Respondent was assigned Permit No. UTR360817.

25. Respondent's NOI indicated that the receiving waterbody for discharges from the Site was the Virgin River.
26. Section 4.1 of the Permits allow permittees to terminate coverage under the Permit by submitting a notice of termination (NOT) to the UDEQ. An NOT may be submitted for a construction site when all construction activities at the site have been completed and the site has been finally stabilized as required by section 6.15 of the Permit or when another party has assumed responsibility for all remaining SWPPP responsibilities. Where a permittee who is identified in the SWPPP as responsible for a specific portion of a site has terminated all construction activities for that portion and stabilized that portion, a partial NOT may be submitted. Section 4.2 of the Permit prohibits submission of an NOT without meeting the requirements specified in section 4.1 of the Permit.
27. According to section 6.15 of the Permit, "final stabilization" means, in relevant part, that "all soil disturbing activities at [a] site have been completed, and that a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geo-textiles) have been employed."
28. On September 11, 2012, Respondent submitted an NOT to the UDEQ, stating, under penalty of perjury, that the entire Site had been stabilized and that all discharges associated with construction activity from the Site had "ceased or been eliminated."
29. On March 13, 2013, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Permit.
30. During their inspection, the EPA inspectors noted that final stabilization had not occurred at the Site.
31. During their inspection, the EPA inspectors noted that as a result of the lack of final stabilization, erosion gullies and rills had formed on the southwest portion of the Site and that sediment had discharged to at least the unnamed tributary referenced in paragraph 9, above.
32. Section 3.5.2 of the Permit requires that each SWPPP describe appropriate controls and measures to be implemented during construction activity and while the site is unstabilized. Section 3.5.3 of the Permit requires that all vegetation, erosion and sediment control measures, and other protective measures identified in the SWPPP be maintained in effective operating condition.

33. During their inspection, the EPA inspectors noted that a silt fence along the tributary referenced above had been damaged and had not been maintained, and that a rock sock was full of sediment and had not been maintained.
34. Section 3.2.1 of the Permit requires that copies of the Permit, the NOI, the SWPPP, and any amendments to the SWPPP be maintained on the relevant construction site.
35. During their inspection, the EPA inspectors noted that no copies of the Permit, the NOI, the SWPPP, or any amendments to the SWPPP were kept on the Site and that there was no indication of any off-Site location where these items could be found.
36. On March 13, 2013, after the EPA's inspection, Respondent emailed copies of the Site's SWPPP, NOI, and NOT to the EPA.
37. Sections 3.2.6 and 5.16 of the Permit require that all SWPPPs be signed by specified corporate officials and that they be certified with the following language:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.*

38. The copy of the SWPPP that Respondent provided to the EPA was not signed or certified.
39. Section 3.5.1.e of the Permit requires that each SWPPP include a general location map and a site map, indicating, among other things, the drainage patterns and approximate slopes anticipated after major grading activities, the location of major structures and nonstructural controls identified in the SWPPP, the locations of areas used for construction support, the locations of areas where stabilization practices are expected to occur, and the location of surface waters, including wetlands.

40. The SWPPP that Respondent provided to the EPA did not include a general location map. The site map in that SWPPP did not show drainage patterns or approximate slopes after major grading activities, did not reflect current or historical conditions (showing only one silt fence instead of the two that were observed on site), did not show locations of porta-potties or fuel spill controls, did not show the location of the support area for fuel storage, did not show the locations of stabilization practices, and did not show the tributary of the Virgin River into which the entire Site drained.
41. Section 3.3.4 of the Permit requires that each SWPPP include dates when major grading activities occur, dates when construction activities cease temporarily or permanently, and dates when stabilization measures are initiated.
42. The SWPPP that Respondent provided to the EPA did not include dates when major grading activities occurred, dates when construction activities cease temporarily or permanently, and dates when stabilization measures are initiated.
43. Section 3.5.2.a.1 of the Permit requires permittees to implement measures (which are also described in SWPPPs) to control erosion and sediment, including but not limited to removing any off-site accumulations of sediment at a frequency sufficient to minimize the possibility of off-site impacts, and removing sediment from sediment traps when design capacity has been reduced by 50%.
44. During their inspection, the EPA inspectors noted evidence of sediment leaving the site and discharging into the tributary referenced in paragraph 9, above, and that a silt fence and rock sock reached over 50% capacity. Although Respondent notified the EPA on April 4, 2013, that the silt fence had been cleaned out on March 26, 2013, the accumulated off-site sediment had not been removed.
45. Section 3.5.2.a.2 of the Permit requires that each SWPPP describe stabilization practices, such as temporary and permanent seeding, mulching, geo-textiles, sod stabilization, vegetative buffer strips, tree protection, and preserving mature vegetation.
46. The SWPPP that Respondent provided to the EPA described an earthen berm, silt fence, and fiber rolls as final stabilization practices, although these practices are structural BMPs, not final stabilization measures.
47. The SWPPP that Respondent provided to the EPA indicated that soil compaction would be employed as a final stabilization practice. However, during their inspection, the EPA inspectors noted that the compaction and the previously described berm and silt fencing were not sufficient to control sediment discharges.

48. Section 3.5.5 of the Permit requires that each SWPPP identify sources of non-storm water (other than flows from fire fighting) that are mixed with storm water discharges.
49. The SWPPP that was provided to the EPA did not address the presence or absence of non-storm water sources or discharges.
50. Section 3.3.1 of the Permit requires that each SWPPP be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not otherwise been addressed in the SWPPP.
51. The SWPPP that Respondent provided to the EPA did not contain any indication of having been updated or amended since the original version. As indicated above, the SWPPP and site map did not match site conditions observed during the EPA's inspection.
52. Section 3.5.4 of the Permit requires regular inspections of the relevant site, with the inspection schedule to be specified in the permit as either (1) at least once every seven calendar days or (2) at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
53. The SWPPP that Respondent provided to the EPA stated that either the seven-day or 14-day schedule would be used, but it did not specify which one was used.
54. Respondent did not conduct inspections of the Site from July 12, 2012, to August 13, 2012, or from September 5, 2012, to March 25, 2013.
55. On April 3, 2013, Respondent submitted a second Notice of Termination to the UDEQ indicating that it had transferred responsibility for compliance with the Permit to another entity known as Emily 50, LC.
56. The EPA has consulted with the UDEQ concerning the issuance of this Complaint.

#### **COUNT I**

57. Respondent violated section 3.1 of the Permit by failing to implement the SWPPP for the Site as written.

#### **COUNT II**

58. Respondent violated section 3.2 of the Permit by failing to keep copies of the SWPPP, Permit, NOI, or any amendment to the SWPPP at the Site and by failing to sign and certify the SWPPP.

### COUNT III

59. Respondent violated section 3.3 of the Permit by failing to keep the Site's SWPPP current, e.g., by failing to amend the SWPPP in response to changes at the Site and by failing to include dates of major grading activities, dates of temporary or permanent construction cessation, and dates of initiating stabilization measures in the SWPPP.

### COUNT IV

60. Respondent violated section 3.5 of the Permit by failing to include all required elements of the SWPPP, failing to implement and maintain the protective measures identified in the SWPPP, and failing to conduct required inspections of the Site.

### COUNT V

61. Respondent violated section 4.2 of the Permit by submitting an NOT to UDEQ on September 11, 2012, for the entire Site certifying that the site had reached final stabilization, when final stabilization of the Site had not occurred and when no other entity had assumed responsibility for all remaining SWPPP requirements.

### PROPOSED CIVIL ADMINISTRATIVE PENALTY

Section 309(g)(2)(A) of the Act, 33 U.S.C. §1319(g)(2)(A), authorizes the EPA to assess a Class I civil administrative penalty for any violation of a condition or limitation of a permit issued under section 402 of the Act, 33 U.S.C. § 1342. For any violation occurring after January 12, 2009, the amount of the penalty the EPA can assess is up to \$16,000 per day for each day the violation continues, with a maximum of \$37,500. These amounts are the result of adjustments for inflation, as described in 40 C.F.R. part 19.

Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires the EPA to take into account the following factors in assessing a civil administrative penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

In light of the statutory factors and the specific facts of this case, the EPA proposes that a penalty of **\$35,000** be assessed against Respondent for the violations alleged above, as explained below:

### Nature, Circumstances, Extent, and Gravity of Violations

As mentioned above, the EPA's inspectors observed that despite Respondent having filed an NOT certifying that the Site had undergone final stabilization, final stabilization had not occurred. They also observed that BMPs had not been maintained, that erosion gullies and rills had formed on Site, and that sediment had discharged from the Site.

Section 305(b) of the Act requires each state to conduct water quality surveys to determine a water body's overall health, including whether designated uses are being met. States and other jurisdictions conduct water quality surveys and report the findings to the EPA every two years. The EPA then prepares a biennial report to Congress, which represents the most complete and up-to-date snapshot of water quality conditions around the country. High sediment loads can cause sedimentation of our nation's waters, which the EPA found in 2004 to be one of the top ten causes of impaired water quality in rivers, streams, lakes, ponds and reservoirs. Discharges from construction sites have been identified as a source of pollution in 14 percent of impaired rivers and 6 percent of impaired lakes, ponds, and reservoirs. See USEPA. 2009. *National Water Quality Inventory: 2004 Report to Congress*. EPA841-R-08-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC. Other pollutants can be absorbed into fine sediment, causing nutrients, especially phosphorus, metals, and organic compounds, to move into aquatic ecosystems. See USEPA. 1998. *National Water Quality Inventory: 1996 Report to Congress*. EPA841-R-97-008. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

The EPA has found that erosion rates from construction sites are much greater than from almost any other land use. Suspended sediment concentrations from construction sites have been found to be many times the concentrations from developed urban areas. Excess sediment is associated with increased turbidity, reduced light penetration in the water column, long-term habitat destruction, and increased difficulty in filtering drinking water. See 64 Fed. Reg. 68722, 68728-68731 (Dec. 8, 1999) for more information on how discharges from construction sites cause water pollution.

The EPA and states with authorized NPDES programs rely on the permit program to implement the controls needed to prevent water pollution. Respondent's failure to properly comply with the Permit has jeopardized the integrity of EPA's and UDEQ's programs to control sediment pollution and has demonstrated disregard for the wellbeing of the Virgin River. To further the goal of protecting the nation's waters through the NPDES permit program, an administrative penalty action holding Respondent accountable for its inaction is appropriate.

### Prior Compliance History

This Complaint is the first enforcement action EPA Region 8 has issued to Respondent regarding noncompliance with the storm water requirements.

### Degree of Culpability

Respondent has operated multiple construction sites in Utah, Arizona, and Nevada since 1993. (See [www.jpexcavating.com](http://www.jpexcavating.com), last visited September 18, 2013.) The EPA's storm water program has been in place since 1990. With its longstanding experience in the excavation business, Respondent should have been aware of the applicable storm water requirements.

In 1990, EPA promulgated Phase I of its storm water program. 55 Fed. Reg. 47990-48091 (November 16, 1990). Phase I required NPDES permit authorization for storm water discharges from construction activity disturbing five or more acres of land, either by itself or in conjunction with other parts of a common development. 55 Fed. Reg. at 48066. In 1999, EPA extended this requirement to storm water discharges from construction activity disturbing between 1 and 5 acres of land. 64 Fed. Reg. 68722, 68839 (December 9, 1999).

Additionally, UDEQ has conducted numerous training and outreach activities over the past several years to increase the regulated community's awareness of storm water control requirements.

Therefore, Respondent should have been fully aware of its responsibilities to meet the requirements related to storm water control.

### Economic Benefit

Respondent received an economic benefit from its failure to comply with the requirements in the Permit. It benefited by not spending the required funds to perform the required site stabilization, to install and maintain all necessary BMPs, to conduct all required inspections, and to develop a complete SWPPP.

### Ability to Pay

The EPA did not reduce the proposed penalty due to this factor, but it will consider any information Respondent may present regarding Respondent's ability to pay the penalty proposed in this Complaint.

### Other Matters that Justice may Require

The EPA has substantially reduced the proposed penalty to account for Respondent's post-inspection efforts in addressing the problems noted during the EPA's inspection.

### **NOTICE OF OPPORTUNITY FOR A HEARING**

Respondent has the right to a public hearing before an EPA judicial officer to dispute any allegation the EPA has made in this Complaint and/or the appropriateness of the penalty the EPA has proposed. If Respondent requests a hearing in its answer, the procedures provided in 40 C.F.R. part 22 will apply to the proceedings, and a Regional Judicial Officer (RJO) will preside. The RJO will be responsible for deciding whether EPA's proposed penalty is appropriate.

To assert its right to a hearing, Respondent must file a written answer (an original and one copy) with the Regional Hearing Clerk of EPA Region 8 (1595 Wynkoop Street, Mail Code 8RC, Denver, Colorado 80202) within 30 days of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of this Complaint. It must also state the grounds for any defense, the facts Respondent disputes, and whether it requests a public hearing. Please see 40 C.F.R. §22.15 for more information on what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE A RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS AND/OR PROPOSED PENALTY. IT MAY ALSO RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE FULL PENALTY PROPOSED IN THIS COMPLAINT OR THE MAXIMUM PENALTY AUTHORIZED BY THE ACT.**

### **QUICK RESOLUTION**

Respondent may resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint.

If made by check, the payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing the Docket Number given on the first page of this Complaint and payable to "Treasurer, United States of America."

The check shall be sent to the EPA in one of the following ways:

By first class US postal service mail:	U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000
By Federal Express, Airborne, or other commercial carrier:	US Bank 1005 Convention Plaza Mail Station SL-MO-C2GL St. Louis, Missouri 63101
Wire transfers:	Federal Reserve Bank of New York ABA = 021030004, Account = 68010727 SWIFT address = FRNYUS33 33 Liberty Street New York, New York 10045 Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"
Automated Clearinghouse (ACH) for receiving U.S. currency:	U.S. Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number 310006, Environmental Protection Agency CTX Format Transaction Code 22 -- checking  Physical location of U.S. Treasury facility: 5700 Rivertech Court Riverdale, Maryland 20737  Contacts: John Schmid (202-874-7026) and REX (Remittance Express) 800-234-5681
On-Line Payment:	WWW.PAY.GOV Enter sfo 1.1 in the search field Open form and complete required fields.

A copy of the check, wire transfer, or record of other type of payment shall be sent at the time of payment to:

Natasha Davis, 8ENF-W-NP  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

and

Tina Artemis, Regional Hearing Clerk, 8RC  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

Payment of the penalty in this manner does not relieve Respondent of the obligation to comply with the requirements of the CWA and its implementing regulations. Payment of the penalty in this manner does, however, constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this penalty assessment.

#### **SETTLEMENT NEGOTIATIONS**

The EPA encourages informal settlement conferences. If Respondent wishes to pursue the possibility of settling this matter, or has any other questions, Respondent (or, if it is represented by counsel, its counsel) should contact Peggy Livingston, Enforcement Attorney, by telephone at 1-800-227-8917, extension 6858, or 303-312-6858, or by mail at the address below. **Please note that contacting this attorney or requesting a settlement conference does not delay the running of the 30-day period for filing an answer and requesting a hearing.**

To discuss settlement or ask any questions about this case or process, Respondent should contact Peggy Livingston, Enforcement Attorney, by telephoning 303-312-6858, or by writing to the following address:

Peggy Livingston, 8ENF-L  
Office of Enforcement, Compliance and  
Environmental Justice  
Region 8, United States Environmental Protection Agency  
1595 Wynkoop Street (ENF-L)  
Denver, Colorado 80202

**PUBLIC NOTICE**

As required by section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, the EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

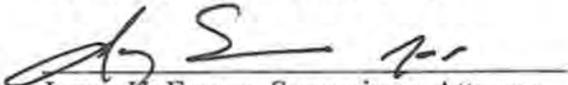
Dated: December 2, 2013.

By:



Gwenette C. Campbell, Unit Chief  
NPDES Enforcement Unit  
Office of Enforcement, Compliance and  
Environmental Justice  
United States Environmental Protection Agency  
Region 8  
1595 Wynkoop Street (ENF-W-NP)  
Denver, Colorado 80202-1129

By:



James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice  
United States Environmental Protection Agency  
Region 8  
1595 Wynkoop Street (ENF-L)  
Denver, Colorado 80202-1129

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing penalty complaint and notice of opportunity for hearing was sent and/or hand-carried, as indicated below,

to:

Judd P. Palmer, Registered Agent  
JP Excavating, Inc.  
1906 South Stone Canyon Drive  
St. George, Utah 84790  
Certified Mail, Return Receipt Requested  
No. 7009 3410 0000 2598 4921  
(One copy, with a copy of 40 C.F.R. part 22)

and

Tina Artemis, Region 8 Hearing Clerk  
United States Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
By Hand Delivery  
(Original and one copy, without 40 C.F.R. part 22)

Date: December 10, 2013

By: Dayle Aldinger  
Dayle Aldinger