

UNITED STATES ENVIRONMENTAL PROTECTION AGENO Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101 EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2019-0033, NPDES No. IDR10011H & IDU000498

Robert Durham Excavation, Inc. & Gerald Martens ("Respondents") are "persons," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Worksheet Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondents are responsible for the deficiencies specified in the Form.

Respondents had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, and/or failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

EPA finds, and Respondents admit, that Respondents are subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondents neither admit nor deny the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$3,800. Respondents consent to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondents certify, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondents shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondents certify that they have submitted a bank, cashiers, or certified check, with case name and docket number noted, for the Having determined that this Agreement is authorized by law, amount specified above, payable to the "Treasurer, United States IT IS SO ORDERED: of America," via certified mail, to:

U.S. EPA, Region 10 Fines and Penalties, Cincinnati Finance Center In the Matter of: Robert Durham Excavation, Inc. & Gerald Martens

Docket No.: CWA-10-2019-0033 P.O. Box 979077 St. Louis, MO 63197-9000

This Agreement settles EPA's civil penalty claims against Respondents for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondents for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective upon filing with the Regional Hearing Clerk.

Edward J. Kowalski, Director Office of Compliance and Enforcement APPROVED BY RESPONDENT: Name (print): (print): Signature

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Date: 3 | 13 | 19

Richard Medniek

APPROXED BY EPA

Regional Judicial Officer, Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101 EXPEDITED SETTLEMENT AGREEMENT 19 MAR 15 AM 10: 08

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U.S. EPA, Region 10

Fines and Penalties, Cincinnati Finance Center In the Matter of: Robert Durham Excavation, Inc.

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Edward J. Kowalski, Director

Office of Compliance and Enforcement

APPROVED BY RESPONDENT:

Name (print):

(print)

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Richard Mednick

Regional Judicial Officer, Region 10

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Did not contain description of

CGP 7.2.5.4

CGP 7.25.4

CGP 7.25.4

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01.7 **9**00

38	For discharge locations that are not accessible, nearby locations are not inspected		CGP 4.1.6.4				\$50.00	ŀ	
37	Entrance/exit not inspected for off-site tracking		CGP 4.1.6	 		Н	\$50.00	Н	
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/polintant discharge, BMP(s) requiring maintenance, BMP(s) that have failed, BMP(s) that are needed, corrective action required including changes/updates to SWPPP and schedule/dates (count each emission under 38 as 1 violation)		CGP 4.1.7			×	\$50.00	2	
39	Inspection reports not properly signed/certified (count	Inspection reports not signed in	CGP I.11.2			IJ	***	Ħ	5400
<u> </u>	each failure to to sign/certify as 1 violation)	accordance with permit	CGP 4.7.2		2	^	\$50.00	Ľ	\$100
					Subtotal Inspecti	001	Deficienci	83	\$350
	AVAILABILITY OF RECORDS								
40	Sign/natice not posted		CGP 1.5		<u> </u>	П	\$250.00	ı	\$250
	A Doos not contain copy of complete NOI	No sign was posted so that it was	CGP 1.5.a	 		H	\$50.00	뒴	
	B Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign	visible from a public road near the project site as required by the permit	CGP 1.5.b			П	\$50.00	-	
					Subtotal Reco	-	Deficienci	80	\$250
	OFCY HANACHRAT DOACTOR	<u> </u>							
41	BEST MANAGEMENT PRACTICES No velocity designation devices located at discharge					_			
	locations or outal channels to ensure non-erosive flow to receiving water Control measures are not properly:	_	CGP 2.1.3.1				\$500.00	-	
42	ourse measures are not properly:			<u> </u>		Н		μ	
	Soloctod, installed and maintained	Appropriate stormwater controls had not been installed prior to the commencement of earth disturbing activities; No creates/sodiment controls between earth disturbing activities and the Perrine Couloo	CGP 2.1.3 CGP 2.2.1.		3		\$500.00	8	\$1,500
[Maintenance not performed prior to next anticipated storm event		CGP 2.11.4				\$250.00	Ω	
	(count each failure to salect, install, maintain each BMP as one violation								:
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-aito impacts		CGP 2.1.23				\$500.00	a	
44	Litter, construction debris, and construction chemicals exposed to storm water are not prevented from becoming a pollutant source (e.g. screening outfalls, pickup daily, etc.)		CGP 2.2.3				\$500.00	a	
45	Stabilization measures are not initiated as seen as practible on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation *Exceptions:		CGP 2.2.14				\$500.00		
-	(a) Snow or frozen ground conditions							J	
	(b) Activities will be resumed within 14 days			7.7		H		H	94.0 <u>2.4</u>
	(c) Arid or Semi-arid areas (<20 inches per year)				- A3			Ĭ	
46	Common Oramage has no sedimentation basin for the 2 year, 24 hour storm, or 3600 cubic ft. storage per acre drained		CGP 2.1.3.2				\$1,000.00		
	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion centrols not implemented for downslope boundaries		CGP 2.1.3.2				\$1,000.00		
	Sodiment not removed from sodiment basin or traps when design capacity reduced by 50% or more		CGP 2.1.3.2.b				\$500.00	2	
47	Common Dramage has no sediment traps, sill fences, vegetative buffer strips, or oquivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting enterio in 48 above)		CGP 2.1.2.2				\$500.00	9	
F	Sodment not removed from sediment trap when	ļ	CGP 2.1.2.2.b		-	H	genn nn		
_L	design capacity reduced by 50% or more		CGP 2.1.2.2.0			×	\$500.00	٢	
					Subtotal Bi	ЦP	Deficiencia	28	\$1,500
	SMALL BUSINESS EVALUATION								
#8 <u></u>	is the Owner/Operator a Small Business?	,				П		Т	
		•				_		_	

REPORT DETAILING CORRECTIVE ACTIONS 12/4/18

IN THE MATTER OF: ROBERT DURHAM EXCAVATION, INC. & GERALD MARTENS.

DOCKET NO:-CWA-10-2019-0033

DEAR RAYMOND ANDREWS,

NO CORRECTIVE ACTIONS COULD BE TAKEN AS ROBERT DURHAM EXCAVATION INC. HAD ALREADY COMPLETED THE SITE WORK FOR ELIZABETH ESTATES PHASE 1 ON JULY 31, 2018. WE RECEIVED YOUR DEFICIENCIES FORM ON OCTOBER 10, 2018.

THANK YOU, ROBERT A. DURHAM

Certificate of Service

The undersigned certifies that the original signed by the Regional Judicial Officer of the attached **EXPEDITED SETTLEMENT AGREEMENT, In the Matter of: Robert Durham Excavation, Inc. & Gerald Martens, Docket No.: CWA-10-2019-0033** was filed with the Regional Hearing Clerk, and that true and correct copies of the original were served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Raymond Andrews, Compliance Officer U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 155, OCE-101 Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Gerald Marten, Owner Elizabeth Estates Project 521 North College Road Twin, Idaho 83301

Robert Durham, Owner Robert Durham Excavations, Inc. 1376 Stoneybrook Circle Twin Falls, Idaho 83301

DATED this _	15	day of	mallh	, 201

Signature

Teresa Young Regional Hearing Clerk EPA Region 10