



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

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

RECEIVED

15 MAR 15 AM 10:07

HEARINGS CLERK  
EPA - REGION 10

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.

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

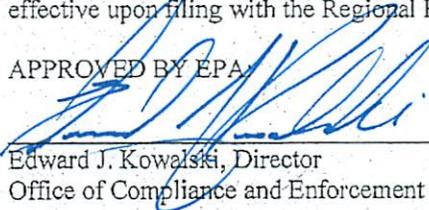
Attached is an "Expedited Settlement Offer Worksheet Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondents are responsible for the deficiencies specified in the Form.

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.

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.

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

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.

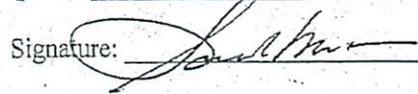
APPROVED BY EPA:  
  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Date: 3/12/2019

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).

APPROVED BY RESPONDENT:  
Name  
(print): Gerald Martens

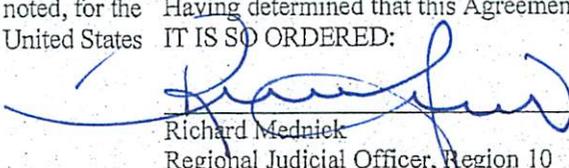
Title  
(print): OWNER

Signature:  Date: 1/29/18

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.

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.

Respondents certify that they have submitted a bank, cashiers, or certified check, with case name and docket number noted, for the amount specified above, payable to the "Treasurer, United States of America," via certified mail, to:

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:  
  
Richard Medniek  
Regional Judicial Officer, Region 10

Date: 3/13/19



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 155, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

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HEARINGS CLERK  
EPA -- REGION 10

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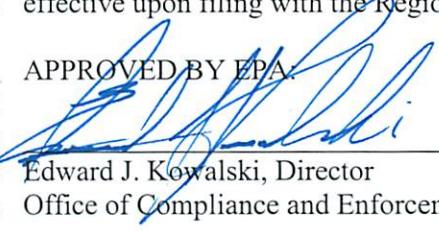
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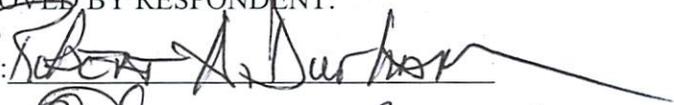
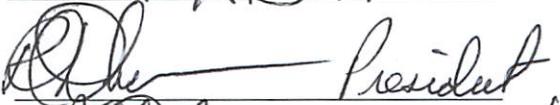
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EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter 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).

  
Date: 3/11/19  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

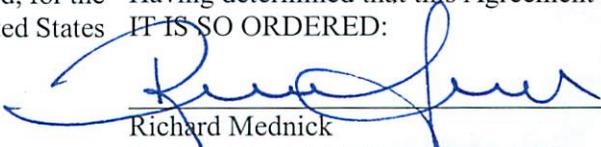
APPROVED BY RESPONDENT:

Name:   
(print): Robert A. Durham  
Title:   
(print): Gerald Martens President  
Signature:   
Date: 12/4/18

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.

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.

Respondents certify that they have submitted a bank, cashiers, or certified check, with case name and docket number noted, for the amount specified above, payable to the "Treasurer, United States of America," via certified mail, to:

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:  
  
Date: 3/13/19  
Richard Mednick  
Regional Judicial Officer, Region 10

**Expedited Settlement Offer Worksheet**  
 Deficiencies Form for 2012 SW CGP  
 Consult instructions regarding ability criteria  
 and procedures prior to use  
 version 10.3.4



Enclosure 1

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Operator 1: Gerard Martens (Owner) 821 North College Road Twin Falls, Idaho 83301	
Operator 2: Robert Durham Excavation, Inc. 1378 Stonybrook Circle Twin Falls, Idaho 83301		Operator 2: Gerard Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavation, Inc. (Operator 2)	
NAME OF SITE CONTACT (E90 Worksheet required):			
Name of Authorized Official (E9 CFR 122.223): Gerard Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavation, Inc. (Operator 2)			
Name of Site Contact (E90 Worksheet required):			
Name of Authorized Official (E9 CFR 122.223): Gerard Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavation, Inc. (Operator 2)			
Start Construction Date: 06/12/2018			
Estimated Construction Date: 12/31/2017			
Permit Number: 07/31/2018			
Name of Receiving Water Body (Indicate whether 303(d) listed): Perno Coulee -> Snake River			
Acres currently disturbed / Acres to be disturbed in Whole Common Plan: 3.50			
Has Operator Requested Rural/Erosion or TMDL Waiver per 44 CFR 122.26(b)(1)? No			
LEGAL NAME AND MAILING ADDRESS OF OPERATOR		Operator 1: Gerard Martens (Owner) 821 North College Road Twin Falls, Idaho 83301	
Operator 2: Robert Durham Excavation, Inc. 1378 Stonybrook Circle Twin Falls, Idaho 83301		Operator 2: Gerard Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavation, Inc. (Operator 2)	
Name of Site Contact (E90 Worksheet required):			
Name of Authorized Official (E9 CFR 122.223): Gerard Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavation, Inc. (Operator 2)			
Start Construction Date: 06/12/2018			
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Has Operator Requested Rural/Erosion or TMDL Waiver per 44 CFR 122.26(b)(1)? No			

3	PERMIT COVERAGE	Operator permitted for _____ months (if months) / _____ (if violations)	Findings	Citation Reference**	R C A	No. of Deficiencies	Dollar Amount	Total
	SWPPP REVIEW						\$500.00	
4	SWPPP not prepared (if no SWPPP, leave elements 5 - 30 blank)			CGP 7.1.1			\$5,000.00	
5	SWPPP prepared but prepared after construction start			CGP 7.1.1		X	\$75.00	
6	SWPPP does not identify all potential sources of (if of months = # of violations)			CGP 7.1.1			\$250.00	
7	SWPPP does not identify all operators for the project site and the areas of the site over which each operator has control			CGP 7.2.4			\$500.00	
8	SWPPP does not have site description, as follows: All operators not listed. Mr. Gerard Martens was not listed as an operator.			CGP 7.2.1		1	\$500.00	
A	Nature of activity in description		Not included in SWPPP	CGP 7.2.2			\$100.00	
B	Controlled sequence of major activities			CGP 7.2.5			\$100.00	
C	Total disturbed acreage			CGP 7.2.3c			\$100.00	
D	General location map			CGP 7.2.6			\$100.00	
E	Site map			CGP 7.2.6			\$500.00	
F	Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, areas of materials, waste, borrow or equipment storage, silt fences, erosion control, areas of final stabilization (count each omission under BF as 1 violation)		Site map not updated to show changes to construction activities and location of stormwater controls	CGP 7.2.4		1	\$50.00	
G	Location/description indicates activities, line controls or asphalt batch plants			CGP 7.2.6.1g			\$500.00	
9	SWPPP does not							
A	Describe all pollution control measures (e.g. BMPs)		Did not contain description of stormwater controls	CGP 7.10		1	\$750.00	
B	Describe sequence for implementation			CGP 7.2.8			\$750.00	
C	Detail operator(s) responsible for implementation			CGP 7.2.5.1			\$250.00	
10	SWPPP does not describe interim stabilization practices			CGP 7.2.1			\$250.00	
11	SWPPP does not describe permanent stabilization practices			CGP 7.2.5.4			\$250.00	
12	SWPPP does not describe a schedule to implement stabilization practices			CGP 7.2.5.4			\$250.00	

36	For discharge locations that are not accessible, nearby locations are not inspected		CGP 4.1.6.4			\$50.00	<input type="checkbox"/>	
37	Entrance/exit not inspected for off-site tracking		CGP 4.1.6			\$50.00	<input type="checkbox"/>	
38	Site inspection report does not include: date, name and qualifications of inspector, weather information, location of sediment/pollutant 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 omission under 38 as 1 violation)		CGP 4.1.7			X \$50.00	<input type="checkbox"/>	
39	Inspection reports not properly signed/certified (count each failure to sign/certify as 1 violation)	Inspection reports not signed in accordance with permit	CGP 1.11.2 CGP 4.7.2		2	X \$50.00	<input type="checkbox"/>	\$100
<b>Subtotal Inspections Deficiencies \$350</b>								
<b>AVAILABILITY OF RECORDS</b>								
40	Sign/notice not posted	No sign was posted so that it was visible from a public road near the project site as required by the permit	CGP 1.5		1	\$250.00	<input type="checkbox"/>	\$250
A	Does not contain copy of complete NOI		CGP 1.5.a			\$50.00	<input type="checkbox"/>	
B	Location of SWPPP or contact person for scheduling viewing times where on-site location for SWPPP unavailable not noted on sign		CGP 1.5.b			\$50.00	<input type="checkbox"/>	
<b>Subtotal Records Deficiencies \$250</b>								
<b>BEST MANAGEMENT PRACTICES</b>								
41	No velocity dissipation devices located at discharge locations or outfall channels to ensure non-erosive flow to receiving water		CGP 2.1.3.1			\$500.00	<input type="checkbox"/>	
42	Control measures are not properly:	Appropriate stormwater controls had not been installed prior to the commencement of earth disturbing activities; No erosion/sediment controls between earth disturbing activities and the Parrino Coulee	CGP 2.1.3 CGP 2.2.1.		3	\$500.00	<input type="checkbox"/>	\$1,500
A	Selected, installed and maintained							
B	Maintenance not performed prior to next anticipated storm event  (count each failure to select, install, maintain each BMP as one violation)							
43	When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 2.1.23			\$500.00	<input type="checkbox"/>	
44	Liter, 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	<input type="checkbox"/>	
45	Stabilization measures are not installed as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased within 14 days after such cessation Exceptions: (a) Snow or frozen ground conditions (b) Activities will be resumed within 14 days (c) Arid or Semi-arid areas (<20 inches per year)		CGP 2.2.14			\$500.00	<input type="checkbox"/>	
46	Common Drainage 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	<input type="checkbox"/>	
A	Where sedimentation basin not attainable, smaller sediment basins, sediment traps, or erosion controls not implemented for downslope boundaries		CGP 2.1.3.2			\$1,000.00	<input type="checkbox"/>	
B	Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 2.1.3.2.b			\$500.00	<input type="checkbox"/>	
47	Common Drainage has no sediment traps, silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries (not required if sedimentation sediment basin meeting criteria in 46 above)		CGP 2.1.2.2			\$500.00	<input type="checkbox"/>	
A	Sediment not removed from sediment trap when design capacity reduced by 50% or more		CGP 2.1.2.2.b			X \$500.00	<input type="checkbox"/>	
<b>Subtotal BMP Deficiencies \$1,500</b>								
<b>SMALL BUSINESS EVALUATION</b>								
48	Is the Owner/Operator a Small Business?							

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 March, 2019

Teresa Young  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10