

## 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

**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 amount specified above, payable to the "Treasurer, United States 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

APPROVED BY EPA:

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.

	Date:	
Edward J. Kowalski, Director Office of Compliance and Enforce		
APPROVED BY RESPONDENT Name (print):		
Title (print):		
Sionature:	Date	

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.

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:

			Date:	

Richard Mednick

Regional Judicial Officer, Region 10

## **Expedited Settlement Offer Worksheet** Deficiencies Form for 2017 SW CGP Consult instructions regarding eligibility criteria

and procedures prior to use

version 10.3.4



	LEGAL NAME AND MAILING A	DDRESS OF OPERATOR	Telephone Number	NPDES F	Permit Numb	er		
1	Operator 1:	Operator 2:	208-420-2461 (Operator 1)	ID				
	Gerald Martens (Owner)	Robert Durham Excavation, Inc.	208-733-0836 (Operator 2)	IDF				
	621 North College Road	1376 Stoneybrook Circle	Inspector Name(s):	Crai				
	Twin Falls, Idaho 83301	Twin Falls, Idaho 83301	Inspector Agency:	State A	gency: IDEQ			
			Entrance Interview Conducted:		Yes			
			Exit Interview Conducted:		Yes			
	LOCATION AND ADDRESS OF	SITE	Exit Interview given to:	Gerald Marter				
2	Elizabeth Estates		Exit Interview time:	12:00	Date:	06/12/2018		
	1854 Elizabeth Boulevard							
	Twin Falls, Idaho 83301							
	FACILITY DESCRIPTION / CON	TACT NAMES		D + 0 + (0				
			Gerald Martens, Property Owner (Operator 1)					
		Name of Site Contact (ESO Worksheet recipient)	,					
			Gerald Martens, Property Owner (Operator 1)					
		Name of Authorized Official (40 CFR 122.22)						
		Inspection Date						
		Start Construction Date		12/13/2017				
		Estimated Completion Construction Date		07/31/2018				
	Name	If Unpermitted, Number of Months Unpermitted		- Caulas — Castes Div				
		of Receiving Water Body (Indicate whether 303(d) listed		e Coulee> Snake Riv				
		ly Disturbed   Acres to be Disturbed in Whole Common Plan						
	nas Operator Requested	d Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)	? No					

		PERMIT COVERAGE	Findings	Citation Reference**	R C A*	No. of Deficiencies		Dollar Amount		Total
3		Operator unpermitted formonths (# months unpermitted equals number of violations)		CWA 301			X	\$500.00	=	
		SWPPP REVIEW			•					
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 (# of months = # of violations)		CGP 7.1.1			Х	\$75.00	=	
6		SWPPP does not identify all potential sources of pollution to include: porta-pottys, fuel tanks, staging areas, waste containers, chemical storage areas, concrete cure, paints, solvents, etc		CGP 7.2.7				\$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	All operators not listed. Mr. Gerald Martens was not listed as an operator.	CGP 7.2.4 CGP 7.2.1		1		\$500.00	=	\$500
8		SWPPP does not have site description, as follows:							$\Box$	
	A	Nature of activity in description	Not included in SWPPPP	CGP 7.2.2 <b>CGP 7.2.3</b>		1		\$100.00		\$100
	В	Intended sequence of major activities		CGP 7.2.5				\$100.00	=	
	С	Total disturbed acreage		CGP 7.2.3.c				\$100.00	=	
ı	D	General location map		CGP 7.2.6			T	\$100.00		
ľ	Е	Site map		CGP 7.2.6			П	\$500.00	=	
		Site map does not show drainage patterns, slopes, areas of disturbance, locations of major controls, structural practices shown, stabilization practices, offsite materials, waste, borrow or equipment storage areas, surface waters, discharge points, areas of final stabilization (count each omission under 8F as 1 violation)	Site map not updated to show changes to construction activities and location of stormwater controls	CGP 7.2.4 <b>CGP 7.4.1</b>		1	X	\$50.00	=	\$50
	G	Location/description industrial activities, like concrete or asphalt batch plants		CGP 7.2.6.1.g				\$500.00	=	
9		SWPPP does not:								
	Α	Describe all pollution control measures (e.g. BMPs)	Did not contain description of stormwater controls	CGP 7.10 CGP 7.2.6		1		\$750.00	=	\$750
į		Describe sequence for implementation		CGP 7.2.5.1				\$250.00	=	
		Detail operator(s) responsible for implementation		CGP 7.2.1				\$250.00	=	
10		SWPPP does not describe interim stabilization practices		CGP 7.2.5.4				\$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	=	

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	proper operation CGP 4.1.5.2 \$50.00 =							Щ		$\sqcup$	
	proper operation		34	· ·		CCD 44 F 2			<b>¢</b> E0 00	_	
proper operation	Discharge locations are not observed and inspected	proper operation				OGF 4.1.5.2			φ50.00	=	
or Discharge locations are not observed and inspected	331   Discharge locations are not observed and inspected   1 (GP4.15.5%6.4   1   1   1   1   50.00   1-1	Discharge locations are not observed and inspected CGP4.1.5.5&6.4 \$50.00 =	35	Discharge locations are not observed and inspected		CGP4.1.5.586.4		П	\$50.00	<sub>=</sub>	•
1 35   Pischarye locations are not observed and inspected   1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		,				220.000.7		ш	<del>-</del>	1 1	

		E and the decree of the state o							
36		For discharge locations that are not accessible,		CGP 4.1.6.4			\$50.00	=	
27		nearby locations are not inspected  Entrance/exit not inspected for off-site tracking				Н		${oldsymbol{ert}}$	
37		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		CGP 4.1.6 CGP 4.1.7		×	\$50.00 \$50.00	=	
<u>39</u>		including changes/updates to SWPPP and schedule/dates (count each omission under 38 as 1 violation)  Inspection reports not properly signed/certified (count	Inspection reports not signed in	CGP I.11.2	2	×	\$50.00		\$100
		each failure to to sign/certify as 1 violation)	accordance with permit	CGP 4.7.2		^	•	Ц	·
					Subtotal Inspection	ons	Deficienci	es	\$350
		AVAILABILITY OF RECORDS							
40		Sign/notice not posted	N	CGP 1.5	1	П	\$250.00	=	\$250
		Does not contain copy of complete NOI	No sign was posted so that it was visible from a public road near the	CGP 1.5.a		П	\$50.00	=	
	В	Location of SWPPP or contact person for scheduling	project site as required by the					П	
		viewing times where on-site location for SWPPP unavailable not noted on sign	permit	CGP 1.5.b			\$50.00	=	
		unavailable not noted on sign	•		Subtotal Reco	rdo	Deficienci		\$250
					Subtotal Recoi	us	Dencienci	62	<b>\$230</b>
		BEST MANAGEMENT PRACTICES				_			
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	=	
42		Control measures are not properly:						H	
72	Α					H		H	
			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 Perrine Coulee	CGP 2.1.3 CGP 2.2.1.	3		\$500.00	=	\$1,500
-	Р	Selected, installed and maintained  Maintenance not performed prior to next anticipated				Н		Н	
	_	storm event		CGP 2.11.4			\$250.00	=	
43		(count each failure to select, install, maintain each BMP as one violation							
73		When sediment escapes the site, it is not removed at a frequency necessary to minimize off-site impacts		CGP 2.1.23			\$500.00	=	
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	=	
45		Stabilization measures are not initiated as soon 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	=	
$\dashv$		(a) Snow or frozen ground conditions						H	
ļ		(b) Activities will be resumed within 14 days							
		(c) Arid or Semi-arid areas (<20 inches per year)							
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	=	
	, ,	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	=	
		Sediment not removed from sediment basin or traps when design capacity reduced by 50% or more		CGP 2.1.3.2.b			\$500.00	=	
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	=	
	Α	Sediment not removed from sediment trap when		CGP 2.1.2.2.b		Х	\$500.00	=	
		design capacity reduced by 50% or more			Oult at all Di			니	¢4 500
					Subtotal B	WP	Deticienci	es	\$1,500
		SMALL BUSINESS EVALUATION							
48		Is the Owner/Operator a Small Business?				П			
L									

Total Expedited Settlement: \$3,800		A small business is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer indiviudals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.	Yes.					
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<sup>\*</sup> Requires Corrective Action

\*\* NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2008, http://cfpub.epa.gov/npdes/stormwater/cgp.cfm