



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

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.

APPROVED BY EPA:

\_\_\_\_\_  
Date: \_\_\_\_\_

Edward J. Kowalski, Director  
Office of Compliance and Enforcement

APPROVED BY RESPONDENT:

Name  
(print): \_\_\_\_\_

Title  
(print): \_\_\_\_\_

Signature: \_\_\_\_\_ 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 ADDRESS OF OPERATOR		Telephone Number	NPDES Permit Number	
1	Operator 1: Gerald Martens (Owner) 621 North College Road Twin Falls, Idaho 83301	Operator 2: Robert Durham Excavation, Inc. 1376 Stoneybrook Circle Twin Falls, Idaho 83301	208-420-2461 (Operator 1) 208-733-0836 (Operator 2)	IDU000498 IDR10011H
			Inspector Name(s): Inspector Agency:	Craig Thomas State Agency: IDEQ
			Entrance Interview Conducted:	Yes
			Exit Interview Conducted:	Yes
			Exit Interview given to:	Gerald Martens & Robert Durham
LOCATION AND ADDRESS OF SITE		Exit Interview time:	12:00	Date: 06/12/2018
2	Elizabeth Estates 1854 Elizabeth Boulevard Twin Falls, Idaho 83301			
FACILITY DESCRIPTION / CONTACT NAMES				
	Name of Site Contact (ESO Worksheet recipient):	Gerald Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavations, Inc. (Operator 2)		
	Name of Authorized Official (40 CFR 122.22):	Gerald Martens, Property Owner (Operator 1) Robert Durham, Owner of Robert Durham Excavations, Inc. (Operator 2)		
	Inspection Date:	06/12/2018		
	Start Construction Date:	12/13/2017		
	Estimated Completion Construction Date:	07/31/2018		
	If Unpermitted, Number of Months Unpermitted:			
	Name of Receiving Water Body (Indicate whether 303(d) listed):	Perrine Coulee --> Snake River		
	Acres Currently Disturbed   Acres to be Disturbed in Whole Common Plan:	3.50		3.50
	Has Operator Requested 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 for _____ months (# 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		X	\$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:						
	A Nature of activity in description	Not included in SWPPPP	CGP 7.2.2 CGP 7.2.3		1	\$100.00	= \$100
	B Intended sequence of major activities		CGP 7.2.5			\$100.00	=
	C Total disturbed acreage		CGP 7.2.3.c			\$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, 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 CGP 7.4.1		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:						
	A 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
	B Describe sequence for implementation		CGP 7.2.5.1			\$250.00	=
	C 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	=

13	Following dates are not recorded: major grading activities; construction temporarily or permanently ceased; stabilization measures initiated (count each omission under 13 as 1 violation)		CGP 7.2.5			X	\$250.00	=	
14	SWPPP does not have description of structural practices to divert flows from exposed soils, retain flows, or limit runoff from exposed areas		CGP 7.2.10				\$500.00	=	
15	SWPPP does not have a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur AFTER construction operations have been completed		CGP 7.2.10.1.a				\$500.00	=	
16	SWPPP does not describe measures to prevent discharge of solid materials to waters of the US, except as authorized by 404 permit		CGP 7.2.10.1.b				\$500.00	=	
17	SWPPP does not describe measures to minimize off-site vehicle tracking and generation of dust		CGP 7.2.10.1.c				\$500.00	=	
18	SWPPP does not include description of construction or waste materials expected to be stored on site w/updates re: controls used to reduce pollutants from these materials		CGP 7.1.11.2				\$250.00	=	
19	SWPPP does not have description of pollutant sources from areas other than construction (asphalt or concrete plants) w/ updates re: controls to reduce pollutants from these materials		CGP 7.2.7				\$500.00	=	
20	SWPPP does not identify allowable sources of non-storm water discharges listed in subpart 1.3.B of the CGP		CGP 7.2.8				\$500.00	=	
21	SWPPP does not identify/ensure implementation of pollution prevention measures for non-storm water discharges		CGP 7.2.8				\$500.00	=	
22	Endangered Species Act documentation is not in SWPPP		CGP 7.2.14.1				\$500.00	=	
23	Historic Properties (Reserved)		CGP 7.2.14.2						
24	Copy of permit and/or NOI not in SWPPP (count each omission under 24 as 1 violation)		CGP 7.2.16			X	\$250.00	=	
25	SWPPP is not consistent with requirements specified in applicable sediment and erosion site plans or site permits, or storm water management plans or site permits approved by State, Tribal or local officials (e.g., MS4 requirements)		CGP 9				\$750.00	=	
26	SWPPP has not been updated to remain consistent with changes applicable to protecting surface waters in State, Tribal or local erosion plans	<b>SWPPP was not updated to show changes to surface water protection measures</b>	CGP 7.4.1 <b>CGP 7.1</b> <b>CGP 7.2</b>		1		\$250.00	=	<b>\$250</b>
27	Copies of inspection reports have not been retained as part of the SWPPP for 3 years from date permit coverage terminates		<b>CGP 4.7.4</b>				\$500.00	=	
28	SWPPP has not been updated/modified to reflect change at site effecting discharge, or where inspections identify SWPPP/BMPs as ineffective, updates to SWPPP regarding modifications to BMPs not made within 7 days of such inspection (count each omission under 28 as 1 violation)	<b>BMP deficiencies were not corrected within the prescribed 7-day period</b>	CGP 7.1 <b>CGP 5.2.3</b>		1	X	\$50.00	=	<b>\$50</b>
29	Copy of SWPPP not retained on site		CGP 7.3				\$500.00	=	
	A SWPPP not made available upon request		CGP 7.3				\$500.00	=	
30	SWPPP not signed/certified		<b>7.2.10</b>				\$500.00	=	
<b>Subtotal SWPPP Deficiencies</b>									<b>\$1,700</b>

<b>INSPECTIONS</b>									
31	Inspections not performed and documented either once every 7 days, or once every 14 days and within 24 hours after storm event greater than 0.25 inches or greater (not required if: temp stabilization; runoff unlikely due to winter conditions; construction during arid periods in arid areas) (Count each failure to inspect and document as one violation).	<b>There was no inspection report from March 7, 2018 through March 27, 2018 (20 days); Inspection reports show a rainfall inspection trigger of 0.6 inches rather than the 0.25 inches shown in the permit.</b>	<b>CGP 4.2.2</b>		1	X	\$250.00	=	<b>\$250</b>
	No inspections conducted and documented (if True, then leave elements 32-39 blank)						True or False		
	Number of Inspections expected if performed every 7 days:	33							
	Number of Inspections expected if performed bi-weekly:	16							
	If known, number of days of rainfall of >0.25"								
32	Inspections not conducted by qualified personnel		CGP 4.1.1				\$50.00	=	
33	All areas disturbed by construction activity or used for storage of materials and which exposed to precipitation not inspected		CGP 4.1.5				\$50.00	=	
34	All pollution control measures not inspected to ensure proper operation		CGP 4.1.5.2				\$50.00	=	
35	Discharge locations are not observed and inspected		CGP4.1.5.5&6.4				\$50.00	=	

36		For discharge locations that are not accessible, nearby locations are not inspected		CGP 4.1.6.4				\$50.00	=	
37		Entrance/exit not inspected for off-site tracking		CGP 4.1.6				\$50.00	=	
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	=	
39		Inspection reports not properly signed/certified (count each failure to to sign/certify as 1 violation)	Inspection reports not signed in accordance with permit	CGP I.11.2 CGP 4.7.2		2	X	\$50.00	=	\$100
Subtotal Inspections Deficiencies										\$350
</										



<p>A <i>small business</i> is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (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.</p>	<p>Yes.</p>				
<p>Total Expedited Settlement:</p>					<p><b>\$3,800</b></p>
<p>* Requires <b>Corrective Action</b></p>					
<p>** NPDES General Permit, 68 FR 39087, issued by EPA on July 1, 2008, <a href="http://cfpub.epa.gov/npdes/stormwater/cgp.cfm">http://cfpub.epa.gov/npdes/stormwater/cgp.cfm</a></p>					