

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF DAVE WILLIAMS REYNOLDS EXCAVATION, 84 WEST 13490 SOUTH DRAPER, UTAH 84020	DOCKET NUMBER I13-06 SETTLEMENT AGREEMENT
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This **SETTLEMENT AGREEMENT** (hereinafter "**AGREEMENT**") is between **REYNOLDS EXCAVATION** (hereinafter "**OPERATOR**") and the **DIRECTOR OF THE DIVISION OF WATER QUALITY** (hereinafter the "**DIRECTOR**"), concerning violations of the *Utah Water Quality Act* (the *Act*), *Utah Code Annotated*, and the *Utah Administrative Code*.

1. The **DIRECTOR** has authority to administer the *Utah Water Quality Act, as amended 1953*, (hereinafter the "**ACT**").
2. The **UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)** has been delegated authority by the U.S. Environmental Protection Agency (EPA) to administer the *National Pollutant Discharge Elimination System (NPDES)* permit program under the *Federal Clean Water Act (CWA)*.
3. The parties now desire to resolve this matter fully without further administrative proceedings except to the extent provided herein by entering into this **AGREEMENT**. Entering into this **AGREEMENT** is not an admission of liability or factual allegation set out in the **NOTICE**, nor is it an admission of or an agreement to any disputed facts or disputed legal theories, nor is it an admission of any violation of any law, rule, regulation or permit by the **OPERATOR**.
4. The **DIRECTOR** will administer the terms and provisions of this **AGREEMENT**.
5. This **AGREEMENT** resolves the **NOTICE OF VIOLATION** and **ORDER**, Docket Number **I13-06** (hereinafter the "**NOTICE**"), between the **OPERATOR** and the **DIRECTOR**, issued to the **OPERATOR** on August 2, 2013, by the **BOARD**. It does not in any way relieve the **OPERATOR** from any other obligation imposed under the Act or any other State or Federal laws.
6. In resolution of said **NOTICE** referenced in Paragraph 5 of this **AGREEMENT**, the **OPERATOR** agrees to;
 - a. Pay a total penalty amount of \$2,475.00 within 30 days of the effective date of this **AGREEMENT** by check made payable to the State of Utah.

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- b. Submit to the **DIRECTOR** for his approval, a report detailing efforts to prove the integrity of the disposal line and insure the integrity of the line.

The penalty has been determined using the *Penalty Criteria for Civil Settlement Negotiations, Utah Administrative Code ("UAC") R317-1-9* which considers such factors as the nature, severity and extent of the violations, history of noncompliance, degree of willfulness and/or negligence, good faith efforts to comply, and economic benefit. Submittals required under this **AGREEMENT** shall be delivered or mailed to the Division of Water Quality, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144870, Salt Lake City, Utah 84114-4870.

7. Nothing contained in this **AGREEMENT** shall preclude the **DIRECTOR** from taking additional actions to include additional penalties against the **OPERATOR** for permit violations not resolved by this **AGREEMENT**.
8. If an agreement between the **OPERATOR** and the **DIRECTOR** cannot be reached in a dispute arising under any provision of this **AGREEMENT**, then the **OPERATOR** or the **DIRECTOR** may commence a proceeding with the **SEQ** under the *Administrative Procedures Act* to resolve the dispute. A final decision in any adjudicative proceeding shall be subject to judicial review under applicable state law.
9. Nothing in this **AGREEMENT** shall constitute a waiver by the **OPERATOR** to raise in defense any legal or factual contention for future allegations of noncompliance.
10. Nothing in this **AGREEMENT** shall constitute or be considered as a release from any claims, to include natural resource damage claims, cause of action, or demand in law or equity which the **STATE** may have against the **OPERATOR**, or any other person, firm, partnership or corporation for any liability arising out of or relating in any way to the release of pollutants to waters of the State.

AGREED to this ____ day of _____, 2014.

REYNOLDS EXCAVATION

**UTAH DIVISION of WATER
QUALITY**

By 
Authorized Agent

By _____
Director

UPDES PENALTY CALCULATION SHEET

LEGAL NAME AND MAILING ADDRESS OF OPERATOR		UPDES Permit Number UTG070503			FACILITY DESCRIPTION / CONTACT NAMES			
Reynolds Excavation Dave Williams 84 West 13490 South Draper, Utah 84020		Date of Analysis 1/17/2014 Site Name: Herber NOV/SA Docket No. I13-06 DEQ Analyst Name Daniel Griffin			Name of Site Contact: Name of Authorized Official: Dave Williams Telephone Number (801)871-6600			
PERMIT COVERAGE	Category of Violation Enter Max \$ Per Day	Credit for Degree of Negligence	Credit for History of Compliance.	Credit for Good Faith Efforts	Total Penalty Per Day	No. of Violation Days	Dollar Amount	Total
Category A	\$7,000-\$10,000 Reduction	80% -\$800	80% -\$800	75% -\$750	\$7,650	0	\$0	\$0
Category B	\$2,000-\$7,000 Reduction	80% -\$1,067	80% -\$1,067	75% -\$1,000	\$3,867	0	\$0	\$0
Category C	\$500-\$2,000 Reduction	80% -\$400	80% -\$400	75% -\$375	\$825	3	\$2,475	\$2,475
Category D	\$0-\$500 Reduction	80% -\$133	80% -\$133	75% -\$125	\$108	0	\$0	\$0
Economic Benefit	Enter Capital Investment Cost	Enter Expenditures (Delayed)	Enter Annual O & M Costs (Avoided)	Enter Date Noncompliance Began	Enter Compliance Date	Total Gravity:		\$2,475
(Enter Numbers From BEN worksheet)						Total BEN:		\$0
						Total Penalty:		\$2,475

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
REYNOLDS EXCAVATION, SETTLEMENT AGREEMENT, DOCKET NO. SAI13-06**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-8*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.
- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

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- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for REYNOLDS EXCAVATION has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on violations of the Utah Clean Water Act .

REYNOLDS EXCAVATION (Reynolds) is an excavation and construction company with their office located at 84 West 13490 South, Draper Utah. On June 11, 2013, Reynolds was installing a sewer line for Midway City located on Pine Canyon Road with approximate latitude 41° 31' 34.41 N longitude 111° 28' 46.19 W in Wasatch County, UT, operating a sump pump to discharge water from the sewer line trench to Pine Creek.

Since Reynolds was operating a sump pump for construction dewatering the discharge was subject to total suspended solids effluent limitations found in Utah Secondary Treatment Standards, *UAC R317-1-3.2*.

Reynolds had not obtained a UPDES construction dewatering discharge permit prior to discharging on June 11, 2013. They also did not have any type of treatment system to meet the total suspended solids daily limitations of 70 mg/l or less.

Samples of the discharge from the sewer installation construction project were taken by members of the Utah Division of Water Quality, above and below the discharge point on June 11, 2013. Results of the samples taken above and below the discharge point are shown below with total suspended solids effluent limitations found in Utah Secondary Treatment Standards, *UAC R317-1-3.2*.

Utah water quality standards violations are shown in bold font:

Total Suspended Solids Monitoring Results Taken on June 11, 2013	
Sample taken above the RE Discharge Point	0 mg/l (Non detectable)
Sample taken below the RE Discharge Point	208 mg/l

In the NOV Reynolds was ordered to submit a report to the Director explaining why they did not secure a permit, and how they will insure they get one when required in the future. They were also ordered to estimate how much water they had discharged. They submitted the report on September 9, 2013, and have taken steps to adequately address the situation and help prevent further violations related to this issue.

Reynolds responded to the Division's concerns regarding the discharge without a permit very quickly, stopped the discharge and applied for a permit. Reynolds will be given 80% credit for "good faith efforts to comply" in the penalty calculation.

Reynolds showed they have taken the problem seriously, and did not intend to discharge without a permit, and has processes in place to address concerns. Reynolds will be given 75% credit for “degree of negligence” in the penalty calculation.

There is not a history with Reynolds violating this permit in this way and discharging without coverage of this permit. For this reason they will be given 80% credit for “history of compliance or non-compliance” in the penalty calculation.

Violations from the NOV

Violation 1 It is unlawful for any person to discharge a pollutant into waters of the state, unless the discharge is authorized by a permit. Utah code Ann. § 19-5-107(1)(a).

This violation qualifies to be classified as a Category C, with it being downgraded to a D or upgraded to a B, depending on the impact of the release on human health and the environment. This discharge did not result in any documented impact on any fish in Pine Creek. It does not warrant being elevated, and thus will be classified as a Category C violation.

Violation 2. It is unlawful for any person to make any discharge not authorized under an existing valid discharge permit. Utah Code Ann. § 19-5-107(3)(a).

This violation qualifies to be classified as a Category C, with it being downgraded to a D or upgraded to a B, depending on the impact of the release on human health and the environment. This discharge did not result in any documented impact on any fish in Pine Creek. It does not warrant being elevated, and thus will be classified as a Category C violation.

Violation 3. Utah Admin. Code § R317-2-7.1 for discharging substances that may interfere with water’s designated uses, or to cause any of the applicable standards to be violated as noted in paragraph C.7 of the NOV.

This violation qualifies to be classified as a Category C, with it being downgraded to a D or upgraded to a B, depending on the impact of the release on human health and the environment. This discharge did not result in any documented impact on any fish in Pine Creek. It does not warrant being elevated, and thus will be classified as a Category C violation.

The release had been documented as occurring for one day. The violation total comes to three Category C violations, all over one day. For the purposes of calculating the penalty three violations over one day is equivalent to one violation over three days. For the ease of calculating this is how the penalty will be calculated. From the attached spreadsheet this comes to a total penalty of \$2,475.00.

Economic Benefit Justification:

Economic benefit received for Uintah Water is calculated based on; 1.capital investment delayed; 2.delayed expenditures and; 3.expenses not incurred. Avoided and delayed expenses are estimated based on a survey of current construction, engineering and product costs.

Capital Investment: This part of the calculation includes pollution items that were not bought to avoid the discharge such as silt fencing, gravel socks, etc.

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- Expenditures: This part of the calculation includes costs of items such as inspections, monitoring, and record keeping set up that were delayed.
- O & M Costs: Avoided operation and maintenance costs were used in the economic benefit calculation.

Upon notification by the Division the discharging was halted, and a permit was acquired. They also started treating the water to meet the discharging limits for the permit. The time span that would be used in a BEN calculation is very short, and would result in negligible amount. Thus Capital Investments and continued O&M costs are negligible. The cost of the expenditures avoided is equivalent to \$0 as a result of them having to get a permit and start treating the discharge. For these reasons a BEN is not being calculated.