

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
UTAH DIVISION OF WATER QUALITY

IN THE MATTER OF ASIMPA, LLC 1464 Country Road 15 Heflin, AL 36264	SETTLEMENT AGREEMENT & ORDER ON CONSENT Docket No. I20-04
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This Administrative Settlement Agreement and Order on Consent (hereinafter "**Settlement**") is between the Director of the Utah Division of Water Quality ("**Director**") and Asimpa, LLC ("**Respondent**") pursuant to the Director's authority to administer the Utah Water Quality Act. The **Director** and **Respondent** are sometimes referred to hereinafter as "**the Parties.**"

1. The **Director** has authority to administer the Utah Water Quality Act ("the **Act**") pursuant to Utah Code Section 19-1-105(1)(e) and has authority to enforce rules through the issuance of orders, as specified in Utah Code Sections 19-5-106(2)(d) and 19-5-111. The **Director** also has authority to settle any civil action initiated to compel compliance with the **Act** and implementing regulations pursuant to Utah Code Section 19-5-106(2)(k).
2. **Respondent** is a "person" as that term is defined in Utah Code Section 19-1-103(4).
3. This **Settlement** is entered into for the purposes of avoiding further administrative enforcement based upon the following findings:
4. On or about April 8, 2020, the Utah Division of Water Quality (Division) was notified of a sediment discharge into Jordanelle Reservoir originating from a large construction project on the west side of Highway 189, the "Mayflower Mountain Resort Development" construction site located near 9143 N Mayflower Mine Road, Heber City in Wasatch County, Utah. According to the report, runoff from melting snow saturated a waste rock pile that was the subject of a remedial action plan that ultimately includes capping with an impervious surface. The pressure of the water within the waste rock pile caused the slope to fail and sediment laden water to be released from the site. The report was entered into the Department of Environmental Quality's Environmental Incident Database and assigned the number 14369
5. On or about April 9, 2020, an employee of the Division inspected the location and determined the discharge originated from impounded water at the base of the slope failure and discharged from the site via a culvert under Highway 189. A concrete settling vault installed on April 6, 2020 prevented the majority of sediment from entering the culvert but fine sediments (sand, silt, and clay) bypassed the inlet protection and flowed into the

culvert to a stream channel in Big Dutch Pete Hollow on the east side of Highway 189 into Jordanelle Reservoir, approximately 375 yards away. A photograph taken by the employee showed cloudy, sediment laden water flowing down Big Dutch Pete Hollow into Jordanelle Reservoir.

6. In response to the discharge, the **Director** issued a Notice of Violation and Compliance Order Docket No. I20-04 (NOV/CO) to **Respondent** on April 13, 2020.
7. Since the NOV/CO was issued, Division and Respondent collected samples of the surface water that had traveled through the culvert, and analyzed them for content of dissolved metals and other pollutants.
8. Laboratory analysis of the water samples taken on April 16, 2020, indicated concentrations of dissolved cadmium, zinc, and total dissolved solids exceeding Division water quality standards.
9. The NOV/CO and this Agreement deal with surface water discharge and storm water permitting violations only.
10. The **Parties** voluntarily enter into this **Settlement** to resolve the NOV/CO issued to the **Respondent** without the necessity of further administrative or judicial proceedings.
11. **Respondent** understands and agrees that a penalty in the amount of \$20,802, with reimbursement of Division costs for sampling and labor in the amount of \$5,115.83, for a total of \$25,917.83, is appropriate based on the application of the Division's penalty policy contained in Utah Administrative Code R317-1-8 as applied to the violation(s) under the circumstances specified herein.
12. This proposed settlement and penalty is subject to a thirty (30) day notice and comment period as provided for in Utah Administrative Code R305-7-402. The **Parties** each reserve the right to withdraw from this **Settlement** if comments received during the notice period result in a modification to the terms and conditions.
13. By entering into this **Settlement**, **Respondent** neither admits nor denies the findings, violations or deficiencies specified herein or alleged in the NOV/CO.
14. Respondent agrees to the terms, conditions and requirements of this **Settlement**. By signing this **Settlement**, Respondent understands, acknowledges and agrees that it waives: (1) the opportunity to contest the allegations in Notice of Violation and Compliance Order, Docket No. I19-05 in an administrative hearing pursuant to Utah Code § 19-1301 and (2) the opportunity for judicial review.
15. The **Parties** mutually agree that this **Settlement** is entered in good faith and is an appropriate means to resolve the matters specified herein.

16. This **Settlement** shall become effective when it is signed by the **Parties** after the necessary thirty-day notice and comment period (Effective Date).
17. On the Effective Date, this **Settlement** will be a final administrative order, subject to the civil enforcement provisions in Utah Code Section 63G-4-501 and other applicable law, including Utah Code Section 19-5-115.
18. **Respondent** understands and agrees that this **Settlement** is not and cannot be raised as a defense to any other action to enforce any federal, state or local law.
19. This **Settlement**, when final, is binding upon **Respondent** and any corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrants that it is authorized to legally bind their respective principals to this **Settlement**.
20. Nothing in this **Settlement** shall limit the power and authority of the Division, Director or the State of Utah to take, direct, or order all actions necessary, including the assessment of civil penalties, in connection with future violations, to protect public health, welfare, or the environment, or to prevent, abate, or minimize an actual, potential, or threatened release of pollutants or contaminants to waters of the State. Further, nothing in this **Settlement** shall prevent the Director or the Water Quality Board from seeking equitable relief to enforce the terms of this **Settlement**, from taking other legal or equitable action as they deem appropriate and necessary in connection with future violations, or from requiring **Respondent** in the future to perform additional activities pursuant to the Act or any other applicable law in connection with future violations.

ORDER

Based upon the foregoing Facts and Findings, the Agreement of **Respondent** and good cause appearing, the Director hereby orders, and Asimpa agrees, to the following terms to fully resolve the matter up to the Effective Date of this **Settlement**:

21. **Respondent** shall pay a penalty as follows:
 - a. A civil penalty in the amount of \$20,802, of which \$13,868 will be held in abeyance pursuant to Paragraph 22 below and \$6,934 which will be due within 30 days of the effective date of this **Settlement**.
 - b. Investigative costs in the amount of \$5,115.83.

Two payments of \$ 6,934 in civil penalties and \$5,115.83 in costs shall be made within thirty (30) days of the Effective Date of this **Settlement** by online payment, or two checks made payable to the State of Utah, referencing this matter, delivered or mailed to:

Utah Department of Environmental Quality
Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

22. The Director agrees to hold in abeyance \$13,868 of the penalty above, so long as Asimpa does not violate the Act, corresponding rules, or Permit UTR395187 for one full calendar year from the Effective Date of this **Settlement**. If new violations occur, the penalty amounts will no longer be held in abeyance and will become due and payable to the State of Utah within 30-days of notice from the Director that the abeyance terms have been violated. In addition, any penalties imposed for new violations will be calculated as follows:

- a. \$4,000 per violation per day for discharge violations. If an exceedance of water quality standards is discovered through voluntary sampling, that exceedance will not trigger this abeyance term so long as pumping and proper disposal offsite or via land application of the affected water, as approved by Division, begins within 48-hours of sample results being received from the analytical laboratory.
- b. \$500 per day for permit violations that do not result in a discharge or are otherwise determined by the Director to be minor.

ACCEPTED BY ASIMPA, LLC:

Name (print) BRIAN HOWLE

Title (print) PRESIDENT

Signature BH

Date 11/17/2020

DIVISION OF WATER QUALITY

Erica B. Gaddis

Date 02/16/2021

Erica Brown Gaddis, PhD

Director