
**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

IN THE MATTER OF:

**Landmark Excavating, Inc.
C/O Nathan R. Simpson
256 North Main Street, Suite B
Alpine, UT 84004**

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER OF
CONSENT**

Docket No. I20-11

This Administrative Settlement Agreement and Order on Consent (“Agreement” or “Order”) is entered into voluntarily by and between the Director of the Utah Division of Water Quality (“Director”), under the Director’s legal authorities described below and **Landmark Excavating, Inc.** in its capacity as the “Operator” who is legally responsible for dewatering operations at the Haven Farms construction site, jointly referred to hereafter as “the Parties.” By entering into this Agreement, the parties wish, without further administrative or judicial proceedings, to resolve the issues arising out of alleged violations of the Utah Water Quality Act, Utah Code Section 19-5-101 *et seq.* (the “Act”), and corresponding regulations in the Utah Administrative Code R305-7 *et seq.*

STATUTORY AND REGULATORY AUTHORITY

1. The Director has authority to administer the Act pursuant to Utah Code Section 19-1-105(1)(e), and to enforce the Utah Water Quality Rules, Utah Administrative Code R317 through the issuance of orders, as specified in Utah Code Sections 19-5-106(2)(d) and Section 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).

FACTS AND FINDINGS

The Director issued a Notice of Violation and Order, Docket Number I20-11 (“NOV/CO”) to Landmark Excavating, Inc. on August 13, 2020. The Director relies upon the following Facts and Findings from the NOV/CO for purposes of this Agreement:

1. Haven Farms North Homeowners Association (Haven Farms) is a corporation doing business in Utah. Haven Farms submitted an NOI and is therefore covered under Utah Pollution Discharge Elimination System (UPDES) Construction General Storm Water permit number UTR396367 as of September 29, 2019.

2. Landmark Excavating, Inc (Landmark) is a corporation doing business in Utah. Landmark is an operator at the Haven Farms Development conducting excavating and dewatering.
3. On June 24, 2020, an inspector for the Division was performing a routine storm water inspection at the Haven Farms Development located at 1170 South Center Street, Midway, Wasatch County, UT. The inspector observed a discharge of sediment laden water into Snake Creek from dewatering pumps draining a trench on the west side and a pit on the east side of the highway to repair the sewer line from the Haven Farms development. The equipment operator onsite was directed to cease discharging the sediment laden water from the site and notified that coverage under the General Permit for Construction Dewatering and Hydrostatic Testing UPDES Permit No. UTG070000 was required to cover the dewatering discharge.
4. On June 25, 2020, the Division's inspector returned to the site and observed the continued dewatering and discharge of the removed sediment laden water into Snake Creek. The inspector again notified staff onsite that the discharge was prohibited and coverage under the General Permit for Construction Dewatering Permit was required. The Inspector left a message on Landmark's voicemail.
5. On June 30, 2020, Matt Alter with Landmark informed the Division inspector that a filter bag had been placed on the discharge pump and the sewer pipe repair was almost complete. The Division inspector sent instructions on how to obtain coverage under the General Permit for Construction Dewatering.
6. On July 15, 2020, Matt Alter with Landmark obtained coverage under the General Permit for Construction Dewatering and Hydrostatic Testing for the Haven Farms Development site, permit number UTG-071308.
7. On August 13, 2020, an NOV/CO was issued to Landmark Excavating, Inc for failure to obtain a permit before construction dewatering operations and two (2) days of discharge without a permit.
8. On August 28, 2020, Matt Alter with Landmark Excavating, Inc responded to the NOV/CO with the information required by the NOV/CO.
9. Utah Administrative Code R317-2-13, Classification of Waters of the State classifies Snake Creek as a Water of the State.
10. Utah Administrative Code R317-2-13, Classification of Waters of the State classifies Snake Creek as Class 1C, 2B, 3A, and Class 4.

ORDER

1. Based upon the foregoing Facts and Findings, the Agreement of Landmark Excavating, Inc. and good cause appearing, IT IS HEREBY ORDERED as follows:

- A. The Division calculated a total penalty of **\$1,267.00**. **Landmark Excavating, Inc.** shall pay a penalty in the amount of **\$500.00** and associated investigative costs in the amount of **\$0.00** for a total of **\$500.00**, which was calculated and adjusted for circumstances in conformance with the penalty policy outlined in Utah Administrative Code R317-1-8.

Payment is to be made within thirty (30) days of the effective date of this Agreement by online payment, or check made payable to the State of Utah, referencing this matter, delivered or mailed to:

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

- B. The Director agrees to hold in abeyance **\$567.00** in civil penalties, so long as **Landmark Excavating, Inc.** does not violate the Act, rules, or UPDES Permit No. UTG070000 for a period of 6 months.

GENERAL PROVISIONS

1. The Parties recognize that this Agreement has been negotiated in good faith and nothing herein constitutes an admission of any liability. **Landmark Excavating, Inc.** does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts and violations alleged in the NOV/CO. Operator further agrees it will not contest the basis or validity of this Order or its terms.
2. **Landmark Excavating, Inc.** agrees to the terms, conditions and requirements of this Order. By signing this Order, **Landmark Excavating, Inc.** understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code Section 19-1-301; (2) the right to contest the finding(s) in the NOV/CO; and (3) the opportunity for judicial review.
3. Compliance will be conditioned upon **Landmark Excavating, Inc.**'s adherence to the requirements of this Order, the Act, and the applicable Water Quality Rules.

4. The Date of Issuance shall be the date this Order is executed by the Director (“Effective Date”). The Director will not sign the Consent Order until after the Division has provided public notice of the proposed Order and has solicited and reviewed any public comments received.
5. The dates set forth in the Order section of this Order may be extended in writing by the Director, in the Director’s sole discretion, based on the Operator’s showing of good cause. Good cause for an extension generally means events outside of the reasonable control of the Operator, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects the Operator to employ reasonable means to limit foreseeable causes of delay. The timeliness of the Operator’s request for an extension shall constitute an important factor in the Director’s evaluation.
6. Nothing in this Order shall preclude the Director from taking actions to include additional penalties against the Operator for future violations of State or Federal law.
7. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Order.
8. The person signing this Order on behalf of the Operator represents to the Director that he or she has the full legal authorization to do so and agrees that the Director may rely on that representation.
9. This Order may be amended in writing if signed by both Parties.

COMPLIANCE AND PENALTY NOTICE

As of the date of Issuance, this Order shall constitute a final administrative order. Compliance with the provisions of the Consent Order is mandatory. All violations of the Utah Water Quality Act, the Water Quality Rules, and this Consent Order will be strictly enforced during the time that this Consent Order remains in effect. The Utah Water Quality Act, Utah Code Section 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district judge imposing a civil penalty per day of violation.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

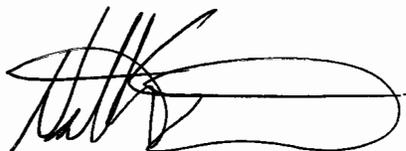
FOR THE UTAH DIVISION OF WATER QUALITY

By: _____
Erica B. Gaddis, PhD
Director

Date: _____ (Effective Date)

FOR (OPERATOR)

By: _____
Title: _____
Date: _____



Nathan R. Simpson, Landmark Excavating, Inc.

DWQ-2020-022949