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

IN THE MATTER OF:

Richmond American Homes of Utah, Inc.
849 West Levoy Drive, Suite 220
Taylorsville, UT 84123
Permit No. UTRC01419

**ADMINISTRATIVE SETTLEMENT
AGREEMENT**

Docket No. I21-02

This Administrative Settlement Agreement (“Settlement”) 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 Richmond American Homes of Utah, Inc. (“Richmond”) in its capacity as the owner or operator legally responsible for the operation of the Lexington Green at Overlake construction project site, located at 415 West 1410 North, Tooele, UT 84074 (“Facility”), jointly referred to herein as “the Parties.” By entering into this Settlement, the parties wish, without further administrative or judicial proceedings, to stipulate to civil penalties arising out of alleged violations of the Utah Water Quality Act, Utah Code §§ 19-5-101 through 19-5-126 (the “Act”), and corresponding regulations in the Utah Administrative Code R317-1-1 through R317-801-6 and R305-7-101 through R305-7-611 (“Water Quality Rules”).

1. The Director has authority to administer the Act pursuant to Utah Code § 19-1-105(1)(e), and to enforce the Utah Water Quality Rules in Utah Administrative Code R317 through the issuance of orders, as specified in Utah Code § 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 § 19-5-106(2)(k).
2. Richmond is a “person” as that term is defined in Utah Code § 19-1-103(4).
3. For the purposes of this Settlement, the Parties agree to and stipulate to the findings and violations identified in the April 19, 2021 Notice of Violation and Compliance Order (“NOV/CO”), Docket No. I21-02, attached hereto as Appendix A, and to the findings described below.
4. Richmond submitted a response to the April 19, 2021 NOV/CO on May 20, 2021, which detailed remedial actions taken for all violations identified. Richmond has timely complied with the requirements in the NOV/CO to the Director’s satisfaction, such that no further remedial action to address the violations is necessary.
5. Based on the application of the Division’s penalty policy, contained in Utah Administrative Code R317-1-8, to the violations specified in the NOV/CO, Richmond agrees to pay:
 - a. a penalty in the amount of **\$18,415.00**; and

- b. current associated investigative/oversight costs in the amount of **\$6,221.50**.
6. This Settlement and penalty are subject to a thirty (30) day notice and comment period. 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.
7. This Settlement will be final after the thirty-day notice and comment period, on the date the Director signs the Settlement.
8. Richmond agrees that within thirty (30) calendar days of receiving the signed and final Settlement from the Director, Richmond shall submit payment in the amounts specified in paragraph 5 above, using one of the following methods:
 - a. CHECK – Payable to the Division of Water Quality. The payment shall be sent to:


Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870
 - b. OTHER – For other available payment options, please contact the Division of Water Quality Finance staff at eqwqfinance@utah.gov.
9. Richmond agrees to the terms, conditions and requirements of this Settlement. By signing this Settlement, Richmond understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code § 19-1-301; (2) the right to contest the finding(s) in the NOV/CO; and (3) the opportunity for judicial review.
10. The Parties mutually agree that this Settlement is entered in good faith and is an appropriate means to resolve the matters specified herein.
11. By entering into this Settlement, Richmond neither admits nor denies the findings, violations or deficiencies specified herein.
12. The violations described herein will constitute part of Richmond's compliance history where such history is relevant, including any subsequent violations. Richmond 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.
13. This Settlement, when final, is binding upon Richmond 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.

FOR THE UTAH DIVISION OF WATER QUALITY

By: _____
John K. Mackey, P.E.
Director

Date: _____ (Effective Date)

FOR (Richmond American Homes of Utah, Inc.)

By:  _____

Title: REGIONAL PRESIDENT

Date: 01/27/2023

Paul Peterson
Division President
Richmond American Homes

Appendix A:
Notice of Violation and Compliance Order,
Docket No. I21-02

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

In the Matter of: Richmond American Homes of Utah, Inc. 849 West Levoy Drive Suite 220 Taylorsville, UT 84123 UTRC01419	NOTICE OF VIOLATION AND COMPLIANCE ORDER DOCKET NO. I21-02
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This Notice of Violation and Compliance Order (NOV/CO) is issued to Richmond American Homes of Utah, Inc. (Respondent) in its capacity as Operator of the Lexington Green at Overlake project site, based upon the Facts and Determinations asserted herein for violations of the Utah Water Quality Act and Utah Water Quality Rules. This NOV/CO is issued by the Director of the Utah Division of Water Quality (Director) pursuant to the Director's authority under the Utah Water Quality Act, as amended, Utah Code. Sections 19-5-101 to 19-5-124 (the Act). This NOV/CO is also issued in accordance with the administrative procedures of the Utah Department of Environmental Quality, Utah Administrative Code R305-7 *et. seq.*

A. STATUTORY AUTHORITY

1. The State of Utah's surface water quality programs as adopted in the Utah Water Quality Act by the Utah Legislature operate with federal oversight and under delegation from the Environmental Protection Agency (EPA) under the federal Clean Water Act, 33 U.S.C. 1342.
2. The Director is authorized to issue, continue in effect, renew, revoke, modify or deny discharge permits and to issue orders under the Act and in accordance with Utah Code Section 19-5-106(2)(d) and may enforce rules made by the Board through the issuance of orders.
3. The Utah Division of Water Quality (Division) was created to administer the Act under the immediate direction and control of the Director pursuant to Utah Code Section 19-1-105.
4. The U.S. Environmental Protection Agency ("EPA") delegated authority to the State of Utah to administer the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), known in Utah as UPDES.
5. Pursuant to Utah Code Section 19-5-111, whenever the Director determines that there are reasonable grounds to believe that there has been a violation of the Act, the water quality rules, or any order of the Director or the Board, the Director may

issue a notice of violation. In that event, the notice shall require that the matters complained of be corrected.

6. Utah Code Section 19-5-115 provides that any person who violates a rule or order made or issued pursuant to the Act, or any rule or order made thereunder, may be subject, in a civil proceeding, to a civil penalty of up to \$10,000 per day of violation. Higher penalties and other sanctions may arise in situations amounting to knowing or willful violations.

7. The Director is authorized to specify a schedule of compliance in a permit leading to compliance with the Act pursuant to Utah Administrative Code R317-8-5.2.

8.

B. APPLICABLE STATUTORY AND REGULATORY PROVISIONS

1. Utah Code Section 19-5-107(1)(a) states: “Except as provided in the [Water Quality Act] or rules made under it, it is unlawful for any person to discharge a pollutant into waters of the state or to cause pollution which constitutes a menace to public health and welfare, or is harmful to wildlife, fish or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or cause to be place any waste in a location where there is probable cause to believe it will cause pollution.”

2. Utah Code Section 19-5-102(22) defines “Waste” or “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial municipal, and agricultural waste . . .”

3. Utah Code Section 19-5-102(23)(a) defines “Waters of the state” as “all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.”

4. Utah Administrative Code R317-8-2.5(2)(c) states: “The Director may require any person authorized by a general permit to apply for and obtain an individual UPDES permit.”

5. Utah Administrative Code R317-8-4.1(1)(a) requires that the permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

C. FACTS & DETERMINATIONS

1. Richmond American Homes of Utah, Inc. is a Utah Corporation registered and doing business in the State of Utah. Its headquarters are located at 849 West Levoy Drive Suite 220 Taylorsville, UT 84123. Its registered agent is CT Corporation System with an address of 1108 E South Union Ave. in Midvale, Utah 84047.
2. On or about February 24, 2021, an Inspection Report was finalized which documented deficiencies observed by the Division on February 5, 2021 during a compliance evaluation inspection on the Respondent's project site Lexington Green at Overlake, which is covered by and was inspected pursuant to Utah Construction General Permit (CGP) UTRC01419.
3. The Division identified the following deficiencies during the February 5, 2021 inspection, as documented in the February 24, 2021 Inspection Report:
 - i. No signage identifying stormwater permit coverage was visible from the public right of way.
 - ii. The site map in SWPPP was not updated to reflect the current status of the site.
 - iii. The site operator did not correct deficient items identified in the self-inspection reports from the December 8, 2020 self-inspection through each inspection until the February 2, 2021 inspection.
 - iv. Two self-inspections were either not performed or documented between the time period of October 12, 2020 and November 26, 2020.
 - v. The inflatable concrete washout containers onsite failed and spilled concrete washout material over a large area in the disturbed portion of the site.
 - vi. A prefabricated concrete washout container was not present onsite as indicated in the SWPPP.
 - vii. Sediment was tracked to the road from the disturbed Phase 2 portion of the site and the tracking control in place was filled with sediment.
 - viii. Multiple lots had vehicles track sediment from the disturbed portion of the lot to the road in the following lots: 49-51, 54-56, 58, 68, 74-78.
 - ix. Inlet protection onsite was not installed or needed repair and were falling into a storm drain inlet near the retention basin.
 - x. Stucco washout dumped without appropriate containers on lots 68 and 69.
 - xi. Dumpsters at lots 68 and 71 were identified as overfilled on the self-inspection report dated December 22, 2020 and were not corrected until February 2, 2021.

- xii. Blowable trash was not contained in the following areas around the site near the retention basin: the 1410 N exit and lots 70-73, 54 and 57.
 - xiii. Portable toilets were sited improperly onsite at lot 69 and 73.
4. Many of the violations identified by the February 5, 2021 inspection and corresponding inspection report are repeat violations observed during previous Division inspections of Respondent's other projects, and settled by Expedited Settlement Offers as described below:
- i. On or about June 3, 2019, an Expedited Settlement Offer was finalized between the Utah Division of Water Quality (Division) and Richmond American Homes (Operator) for deficiencies observed on February 12, 2019 during a construction storm water inspection on the project site White Horse Ranch, pursuant to Utah Construction General Permit (CGP) UTR391481.
 - ii. On or about February 18, 2021, an Expedited Settlement Offer was finalized between the Division and Richmond American Homes for deficiencies observed on November 17, 2020 during a construction storm water inspection on the project site Anderson Farms, pursuant to Utah CGP UTRC01316.

D. VIOLATIONS

Based on the foregoing **Richmond American Homes of Utah, Inc.** has violated the following:

1. Failure to implement pollution prevention controls, in accordance with the technology-based effluent limitations of UPDES Permit No. UTRC01419, that minimize the discharge of pollutants in storm water and prevent the discharge of pollutants from spilled or leaked materials from construction activities by:
 - a. spilling concrete washout and stucco washout material;
 - b. allowing substantial sediment track-out to build-up on the public roadway;
 - c. lacking adequate inlet protection;
 - d. overfilling dumpsters and not providing containment for waste that is blowable; and
 - e. not staking down portable toilets so that they are secure and will not be tipped or knocked over.
2. Failure to comply with the following administrative and recordkeeping requirements of UPDES Permit No. UTRC01419:
 - a. posting signage that provides notice of permit coverage;
 - b. updating site map to reflect current site status, as required by SWPPP;
 - c. take corrective action, within required timeframe, when deficiencies were identified and;
 - d. conduct site inspections in accordance with permit schedules.

F. ORDER

Based on the foregoing Facts and Determinations, and Violations and pursuant to Utah Code Sections 19-5-107 and 19-5-111, **Richmond American Homes of Utah, Inc.** is hereby **ORDERED** to:

1. As of the date of issuance of this NOV/CO, if not already initiated, initiate all action required to come into compliance with all applicable provisions of the Utah Water Quality Act in Utah Code Title 19 Chapter 5, the Water Quality rules in the Utah Administrative Code, R317 and UPDES Permit No. UTRC01419.
2. Submit a report containing the information below. The report must be submitted to the Director within thirty (30) days of the date of issuance of this NOV/CO and must provide the information listed below:
 - A. An evaluation of what caused the cited violations. This information should include the facts of the specific violations outlined in the Facts and Determinations, as well as any other information regarding the violations that occurred that may be important in resolving the violations listed in Section D of this NOV/CO.
 - B. Describe, in detail, the actions taken and/or planned to be implemented (including dates), to attain and continue to be in full compliance with this NOV/CO.

G. NOTICE

Richmond American Homes of Utah, Inc. may contest this NOV/CO by filing and serving a written Request for Agency Action as provided in Utah Administrative Code R305-7-303 and R305-7-104(5). The NOV/CO is effective upon issuance (date signed) and, even if it is contested, remains effective unless a stay is issued or the NOV/CO is rescinded, vacated or otherwise terminated.

Failure to contest this NOV/CO within the period specified in R305-7-303(5) [30 days] waives any right to contest the NOV/CO or to seek judicial review.

All reports required under this NOV/CO must be accompanied by the following certification, which is to be signed in accordance with Utah Administrative Code R317-8-3.4(4):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief,

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.”

Utah Code Section 19-5-115 provides that violation of the Water Quality Act or a related Order may be subject to a civil penalty of up to \$10,000 per day of violation. Under certain circumstances of willfulness or gross negligence, violators may be fined up to \$25,000 per day of violation. Failure to comply with this NOV/CO may result in additional civil penalties or criminal fines under Utah Code Section 19-5-115.

Issued this 19th day of April, 2021.



Erica Brown Gaddis, PhD
Director, Division of Water Quality

DWQ-2021-6780