



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 16 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Article No.: 7015 0640 0007 6347 3502

Edward J. Carroll, Esq.
2733 Route 209
Kingston, New York 12401

Re: Consent Agreement and Final Order
Docket No. SDWA-02-2014-8902

Dear Mr. Carroll:

Enclosed is a fully executed Consent Agreement and Final Order (CA/FO) for the above-referenced matter. The Final Order was issued on October 6, 2015 and the effective date is October 16, 2015.

Please note that your client is required to make the initial penalty payment of \$1004.17 by no later than 30 days after the effective date of this Order, or by no later than November 15, 2015.

Should you have any questions, please contact me at (212) 637-3232 or feinmark.phyllis@epa.gov.

Sincerely,

Phyllis S. Feinmark
Chief
Water and General Law Branch

Enclosure

cc: Mark Klotz (w/enc.)
Director
Division of Water
New York State Dept. of Environmental Conservation
625 Broadway
Albany, NY 12233-3500

U.S. Environmental
Protection Agency-Reg 2
2015 OCT 16 PM 12: 47
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

U.S. Environmental
Protection Agency-Reg 2
2015 OCT 16 PM 12:47
REGIONAL HEARING
CLERK

IN THE MATTER OF:

FDD, Inc.
5261 Route 9W
Newburgh, NY 12550
Respondent

Proceedings under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO.
SDWA-02-2014-8902

I. PRELIMINARY STATEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued, on April 16, 2014, a “Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing” (“Complaint”) to Respondent, FDD, Inc.

Complainant and Respondent (collectively, “the Parties”), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby ordered as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. EPA initiated this proceeding to achieve compliance with the Safe Drinking Water Act (“SDWA” or “Act”) pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c).
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and 40 C.F.R. 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocation,

Termination or Suspension of Permits” (“CROP”), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.

3. The Complaint alleges violations of the SDWA Part C requirements – Underground Injection Control, as the violations pertain to a Class V injection well located at 5265 Route 9W, Newburgh, NY 12550 (“Facility”). The Complaint specifically alleges that Respondent violated 40 C.F.R. §144.88(b)(1)(vi) by failing to close or obtain a permit for its motor vehicle waste disposal well (“MVWDW”) by no later than January 1, 2008; 40 C.F.R. §144.12(a) by injecting in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons; and 40 C.F.R. §144.11 by continuing to inject into its MVWDW without a permit. The Complaint alleges that the Class V well is owned and/or operated by Respondent.
4. This action was public noticed between May 2, 2014 and June 1, 2014. No comments were received.
5. By letter dated May 8, 2014, Respondent filed an Answer to the Complaint and requested a hearing pursuant to 40 C.F.R. Part 22 (CROP).
6. By letter dated April 30, 2015, Respondent submitted a draft closure plan for EPA’s review.
7. By letter dated May 12, 2015, EPA approved Respondent’s closure plan.
8. On August 24, 2015, injection of motor vehicle waste ceased. An EPA inspector witnessed the service bay floor drain being sealed with concrete and the septic system being pumped out pursuant to Respondent’s approved closure plan.

III. CONSENT AGREEMENT

1. The Paragraphs above are re-alleged and incorporated herein by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in the Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
4. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this CAFO.

5. Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this Consent Agreement and Final Order.
6. Based upon the foregoing and pursuant to Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. §300h-2(c), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

A. Payment of Civil Penalty

1. Pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c), EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good faith efforts to comply with the applicable requirements, and other matters as justice may require.
2. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **Five Thousand Dollars (\$5,000.00)**. This penalty shall be paid in six equal installments pursuant to the following schedule:

Due by:	Payment	Principal	Interest
Effective Date + 30 days	\$1,004.17	1,000.00	\$4.17
Effective Date + 210 days	\$820.00	800.00	\$20.00
Effective Date + 390 days	\$816.00	800.00	\$16.00
Effective Date + 570 days	\$812.00	800.00	\$12.00
Effective Date + 750 days	\$808.00	800.00	\$8.00
Effective Date + 930 days	\$804.00	800.00	\$4.00
Totals:	\$5,064.17	\$5,000.00	\$64.17

3. For the purpose of settlement, Respondent consents to the issuance of this Consent Agreement, and consents to the payment of the civil penalty cited in Paragraph 2, above.
4. Civil penalty payments shall be made to the "Treasurer of the United States of America." Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information				
Debit and Credit Card Payments	https://www.pay.gov/paygov/				
Checks from U.S. Banks Finance Center Contacts: Craig Steffen (513-487-2091)	<table border="1"> <tr> <td data-bbox="782 325 1117 394">U.S. Postal Service</td> <td data-bbox="1117 325 1408 394">UPS, Federal Express, or Overnight Mail</td> </tr> <tr> <td data-bbox="782 436 1117 772">US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197- 9000</td> <td data-bbox="1117 436 1408 772">U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028</td> </tr> </table>	U.S. Postal Service	UPS, Federal Express, or Overnight Mail	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197- 9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028
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US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197- 9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028				
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001				
Wire Transfers (any currency) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"				
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express), 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737				

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Phyllis Feinmark, Esq.
Assistance Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3232

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

5. Payment must be received on or before the day specified in the payment schedule in Paragraph 2. The date by which payment must be received shall hereafter be referred to as the "due date".
6. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
7. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
8. In addition, pursuant to Section 1423(c)(7) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the Effective Date (*see* Final Order, Section V below). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. You also may be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.
9. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or State of New York taxes.

IV. GENERAL PROVISIONS

1. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligations to comply with the CAFO.
2. Violations of the terms of the Final Order after its Effective Date (*see* Final Order, Section V below), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).
3. This CAFO shall not relieve Respondent of Respondent's obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
4. This CAFO constitutes a final settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
5. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
6. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

FOR THE RESPONDENT:

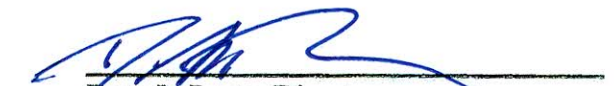
Dated this 29th day of: September, 2015



Frank Felicello, Jr. *on behalf of FDD, Inc.*
FDD, Inc.

FOR THE COMPLAINANT:

Dated this 5th day of: October, 2015



Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. EPA, Region 2
New York, New York 10007-1866

V. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency and having further re-delegated such authority to the Regional Judicial Officer, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as a Final Order. The Effective Date of this Final Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATE: October 6, 2015



HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:
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of the Safe Drinking Water Act,
42 U.S.C. § 300h-2(c)

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO.
SDWA-02-2014-8902

CERTIFICATE OF SERVICE

I certify that on October 16, 2015, I served the above-cited Consent Agreement
And Final Order, bearing the above referenced docket number, on the persons listed
below, in the following manner:

Original and One Copy By Hand:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

One Copy By Hand:

Helen S. Ferrara
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

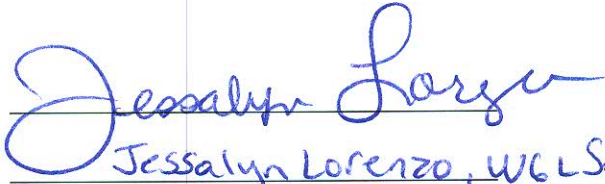
Copy by Certified Mail, Return Receipt Requested:

Edward J. Carroll, Esq.
2733 Route 209
Kingston, NY 12401.

Dated: 10-16-15

Signature:

Name and Title:


Jessalyn Lorenzo, WGL Secretary