



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 29 2011

CERTIFIED MAIL 70102780000182160171  
RETURN RECEIPT REQUESTED

Mr. Robert Exum  
President  
YDV, Incorporated  
P. O. Box 1967  
Wilmington, North Carolina 28402

Re: Consent Agreements and Final Orders  
CWA-04-2011-4517(b)-Compass Pointe Phase 2  
CWA-04-2011-4518(b)-Compass Pointe Phase 3  
Leland, North Carolina

Dear Mr. Exum:

Enclosed please find a fully executed copies of the Consent Agreements and Final Orders, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Susan Pope at (404) 562-9770.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosures (2)

cc: Coleen H. Sullins, Director, Division of Water Quality  
North Carolina Department of Natural  
Resources, Division of Land Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

YDV, INCORPORATED )  
COMPASS POINTE PHASE 2 )  
LELAND, NORTH CAROLINA )

RESPONDENT )

) CONSENT AGREEMENT AND  
) FINAL ORDER

) DOCKET NO. CWA-04-2011-4517 )

HEARING CLERK

2011 SEP 29 PM 2:13

RECEIVED  
EPA REGION IV

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, YDV, Incorporated ("Respondent"), is a corporation duly organized and existing under the laws of the State of North Carolina and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated a construction site known as Compass Pointe Phase 2 ("Development") located off Highway 74 in Leland, North Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of North

Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. On October 3, 2006, the NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG010000 ("Permit"), in accordance with North Carolina General Statute 143-215.1 and the CWA. The NCDENR reissued the Permit on January 1, 2010, which shall expire on August 2, 2011. As of January 1, 2010, all projects that had coverage under the Permit are covered by the reissued Permit. The NCDENR Division of Land Resources, Land Quality Section, is responsible for the approval of coverage under the Permit upon submission and approval of an Erosion and Sedimentation Control Plan ("Plan") prior to commencement of construction.

8. In October 2007, the Respondent submitted a Plan to the NCDENR seeking coverage under the Permit for its Development. The NCDENR issued its approval of coverage under the Permit in December 2008.

9. Part I.A.2 of the Permit requires the implementation of the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit, unless to correct an emergency or to make a minor modification, which case the deviation must be noted on the approved Plan.

10. Part I.C.1 of the Permit requires compliance with Final Limitations and Controls, once disturbance has begun on the site, until completion of construction or development and establishment of permanent groundcover.

11. Part I.C.2 of the Permit requires the permittee to provide operation and maintenance necessary to operate stormwater controls at optimum efficiency.

12. Part II.B.1 of the Permit requires compliance with all conditions of the Permit. Any Permit noncompliance constitutes a violation of the CWA.

13. Part II.B.2 of the Permit requires all reasonable steps to be taken to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment.

14. Part II.C.1 of the Permit requires the permittee to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the Permit.

15. On July 17, 2010, representatives of the EPA, in conjunction with the NCDENR, performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA and the Permit.

16. As a result of the CSWEI, the EPA determined that the Respondent discharged stormwater associated with industrial activity within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), from its Development into Alligator Branch and an adjacent wetlands area, which are navigable waters within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. During the CSWEI, the EPA observed the following:

A. The Plan was not implemented as approved, as required by Part I.A.2 of the Permit. Sediment traps ("ST") ST-26 through ST-33 were not denoted in the approved Plan as discharge areas and/or outfalls.

B. The Respondent failed to provide operation and maintenance necessary to operate stormwater controls at optimum efficiency, as required by Part I.C.1, Part I.C.2 and Part II.C.1 of the Permit. Silt fencing near ST-27 and ST-31 needed maintenance; a ditch on the eastern portion of Pond 5 and an area east of Pond 5 needed stabilization; and T-27 needed maintenance.

C. The Respondent failed to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment, as required by Part II.B.2 of the Permit. Evidence of sediment discharges was observed leaving the Development and entering the wetlands near ST-27.

18. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the NCDENR Permit, and also for discharges not authorized by the NCDENR Permit.

### **III. Stipulations and Findings**

19. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

20. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

21. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

22. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

23. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

24. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

25. Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

26. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Seven Thousand and Five Hundred Dollars (\$7,500) is an appropriate civil penalty to settle this action.

27. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, Missouri 63197-9000

28. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
Clean Water Enforcement Branch  
Municipal and Industrial Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

29. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

30. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment

penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

#### **V. General Provisions**

31. This CA/FO shall not relieve the Respondent of its obligation 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. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

32. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

33. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

34. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

35. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

36. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

37. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

38. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

For the Respondent:

Robert Exum  
President  
YDV, Inc.  
P.O. Box 1967  
Wilmington, North Carolina 28402

39. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

40. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

#### **VI. Effective Date**

41. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

#### **AGREED AND CONSENTED TO:**

#### **For RESPONDENT, YDV, INCORPORATED:**

  
\_\_\_\_\_

NAME: Robert Exum

TITLE: President

Date: 8-4-2011

#### **For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_

Denise D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: 9/29/11

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

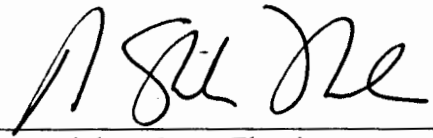
IN THE MATTER OF: )  
 )  
YDV, INCORPORATED ) CONSENT AGREEMENT AND  
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COMPASS POINTE, PHASE 2 )  
LELAND, NORTH CAROLINA )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2011-4517(b)  
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\_\_\_\_\_ )

**FINAL ORDER**

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/29/2011

  
\_\_\_\_\_  
Gwendolyn Keyes Fleming  
Regional Administrator



**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of YDV, Incorporated, Docket No. **CWA-04-2011-4517(b)** (filed with the Regional Hearing Clerk on 9/29, 2011, was served on 9/29, 2011, in the manner specified to each of the persons listed below.

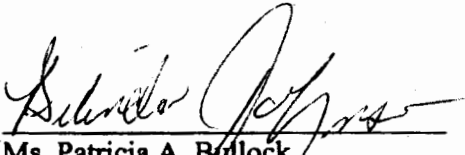
By hand-delivery:

Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested:

Robert Exum  
President  
YDV, Incorporated  
P. O. Box 1967  
Wilmington, North Carolina 28402

Coleen H. Sullins  
Director, Division of Water Quality  
North Carolina Department of Environment and Natural Resources  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

  
for Ms. Patricia A. Bullock  
Regional Hearing Clerk  
Sam Nunn Federal Center  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511