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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

Polo Development, Inc.)
AIM Georgia, LLC)
Joseph Zdrilich)

Respondents)

) Docket No.: CWA-05-2013-003 ²²

) **Consent Agreement and Final Order**
) Pursuant to Sections 309(a) and (g) of
) the Clean Water Act, 33 U.S.C.
) §§1319(a) and (g).

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

I. Preliminary Statement

1. This Consent Agreement and Final Order (CAFO) between the United States Environmental Protection Agency (EPA), Polo Development, Inc. (Polo), AIM Georgia, LLC (AIM) and Joseph Zdrilich (Respondents) is entered pursuant to the authority of sections 309(a) and (g) of the Clean Water Act (CWA), 33 U.S.C. §§ 1319(a) and (g).
2. This is an administrative action for a penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Sections 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 the Revocation, Termination or Suspension of Permits, (Consolidated Rules) 40 C.F.R. §§ 22.18(b)(2) and (3).
3. This is an administrative order on consent for restoration of wetlands agreed to

between the EPA and the Respondents pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a).

4. The Administrator has delegated her authority under sections 309(a) and (g) of the CWA, 33 U.S.C. §§ 1319(a) and (g) to the Regional Administrator of EPA, Region 5. The Regional Administrator in turn has redelegated this authority to the Director, Water Division, EPA Region 5.
5. Complainant is the Director of the Water Division, EPA Region 5.
6. The Respondents are Polo Development, Inc. (Polo) a corporation registered in the State of Ohio, AIM Georgia, LLC (AIM) a limited liability company registered in the State of Georgia, and Joseph Zdrilich, an individual.

II. Statutory and Regulatory Basis

7. The Administrator has authority to issue compliance orders and assess civil penalties for violations of sections 1311 or 1344 of the Clean Water Act pursuant to sections 309(a)(3) and (g) of the CWA, 33 U.S.C. §§ 1319(a)(3) and (g).
8. Discharges of pollutants are prohibited to the waters of the United States pursuant to section 301(a) of the CWA, 33 U.S.C. § 1311(a). The terms “discharge of pollutants,” “pollutant,” “navigable waters,” “waters of the United States,” “point source,” and “wetlands” are defined in sections 502(6), (7), (12) and (14) of the CWA, 33 U.S.C. §§ 1362(6), (7), (12) and (14) and 40 C.F.R. §§ 230.3(s), 230.3(t) and 232.2.

III. Factual Allegations

9. The Respondents in this matter are: Polo Development, Inc., 8599 Youngstown Pittsburgh Road, Poland, Ohio; AIM Georgia, LLC, 2345 Stone Willow Way,

Buford, Georgia; and Joseph Zdrilich, 8599 Youngstown Pittsburgh Road, Poland, Ohio. Polo is a corporation, AIM is a limited liability company and Joseph Zdrilich is an individual, and each is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. The property subject to this Order is located north of Polo Boulevard in Poland Township, Mahoning County, Ohio ("the Site"). Exhibit 1, map. Polo owned the Site from November 26, 2003, until September 4, 2007, when it transferred the property to AIM. The current owner of record for this Site is AIM.
11. Prior to November 2006, the Site contained approximately 0.82 acres of wetlands and was immediately adjacent to Burgess Run, Exhibit 1.
12. Beginning on or about November 2, 2006, and on subsequent dates, persons acting on behalf of the Respondents cleared vegetation, including tree roots, graded the Site and used mechanized land-clearing and earth-moving equipment to discharge dredge or fill material, including, among other things, dirt, spoil, rock and sand into Burgess Run, into adjacent unnamed waters, into downstream waters of Burgess Run and into wetlands adjacent to and abutting the unnamed tributaries and Burgess Run at the Site, Exhibit 1.
13. Respondents' actions resulted in the "discharge of a pollutant" from a "point source" as those terms are defined by Sections 502(6), (12) and (14) of the CWAs, 33 U.S.C. §§ 1362(6), (12) and (18).
14. Prior to November 2006, areas of the Site were inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances did support, a prevalence of vegetation typically adapted

for life in saturated soil conditions. Therefore, the Site contained “wetlands” as defined by 40 C.F.R. § 232.2.

15. The Site “abuts” the waters of Burgess Run, and is “adjacent” to the waters of the Yellow Creek, as defined by 40 C.F.R. § 232.3. The waters of the wetlands and the unnamed tributary abut and flow into Burgess Run. The waters of Burgess Run flow approximately 3 river miles to Yellow Creek. Yellow Creek flows approximately 2.5 river miles before it is a “Traditional Navigable Water” as defined by 40 C.F.R. § 230.3(s)(1).
16. Respondents’ actions resulted in the discharge of pollutants from a point source into “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7). Consequently, Respondents are persons who discharged pollutants from point sources into navigable waters in violation of Section 301 of the Act, 33 U.S.C. § 1311.
17. On October 26, 2011, EPA issued an administrative order to Respondents pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a) requiring them to develop and implement a plan to restore the filled area to wetlands (Restoration Order). Respondents submitted a Restoration Plan in February of 2012. EPA approved of Respondents’ Restoration Plan on March 9, 2012.
18. Respondents have not complied with the administrative order issued on October 26, 2011.
19. On January 8, 2013, EPA issued a Complaint pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), proposing a penalty of \$30,500 for violations of Sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344. Respondents filed

an Answer on March 6, 2013.

IV. General Stipulations

20. Respondents admit the jurisdictional allegations in this CAFO, but neither admit nor deny the specific factual allegations of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2).
21. Respondents consent to the assessment of the civil penalty of this CAFO pursuant to 40 C.F.R. § 22.18(b)(2).
22. Respondents consent to the wetlands restoration activity required by Section VI of this CAFO pursuant to section 309(a) of the CWA, 33 U.S.C. § 1319(a).
23. Respondents waive their rights to request a hearing as provided in 40 C.F.R. § 22.15(c) and any right to contest the allegations of this CAFO. They waive any right to appeal of the Final Order.
24. This CAFO constitutes a complete and full settlement of, and resolves Respondents', their owners' and affiliates' civil liability with prejudice for the violations alleged in this CAFO.
25. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
26. This CAFO does not affect Respondents' responsibility to comply with the CWA and other applicable federal, state and local, laws and regulations.
27. This CAFO is a "Final Order" in resolution of the complaint filed in this case and pursuant to 40 C.F.R. §§ 22.18 and 22.31. The terms of this CAFO bind U.S. EPA and Respondents and their successors and assigns.

28. Each person signing this CAFO certifies that he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.
29. Each party agrees to bear its own costs and fees, including attorney fees, and mediation fees involved in this action. Respondents' share of the mediation fees is no more than \$2,500 which will be paid upon receipt of a bill from the mediation service employed in this matter.
30. This CAFO constitutes the entire agreement between the parties.
31. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto. No oral modification of this CAFO shall be effective. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.
32. Any and all obligations of Respondents under this CAFO terminate upon Respondents' payment of the civil penalty and satisfactory and timely completion of the wetlands restoration.
33. Pursuant to 40 C.F.R. part 2, subpart B, Respondents are entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to Section VI of this Order, except effluent data, as defined at 40 C.F.R. § 2.302(a)(2). Failure to assert a claim of business confidentiality renders all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. part 2, subpart B.

V. Civil Penalties

34. Respondent agrees to pay a civil penalty of \$7,500 within thirty (30) days of the

effective date of this CAFO. Respondents agree to pay the penalty by sending a cashier's or certified check, payable to the order of the U.S. Treasury:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 970977
St. Louis, Missouri 63197-9000

35. Respondents must include with their cashier's or certified check a transmittal letter stating the name of this action, Respondents' complete address, Docket No. CWA-05-2013-003 and the Billing Document No. of this action. Respondents must send copies of each check and transmittal letter to:

LaDawn Whitehead
Regional Hearing Clerk
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3511

Melanie Haveman
Watersheds and Wetlands Branch
U.S. Environmental Protection Agency
77 West Jackson Boulevard (WW-16J)
Chicago, Illinois 60604-3511

Richard J. Clarizio
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3511

36. This civil penalty is not deductible for federal tax purposes.
37. If Respondents fail to timely pay the civil penalty, Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and Complainants' enforcement expenses for the collection

action.

38. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due. EPA will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

VI. Agreed Order for Restoration

This section is issued pursuant to Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3) and supercedes Respondents' February, 2012 Restoration Plan and EPA's March 9, 2012, approval.

39. Respondents will refrain from further discharges of dredge or fill material into wetlands, streams or other waterways on the Site, except in compliance with a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251 - 1387.
40. Respondents shall restore and create 0.82 acres of forested wetlands in accordance with the May 2013, *Wetland Restoration Report*, developed by Ecotune Environmental Consultants as modified on June 24, 2013. Exhibit 2.
- Respondents shall restore and create forested wetlands in the areas identified in Figure 3 of Exhibit 2. Respondents shall grade the identified areas to the elevations identified in Figure 3 and shall plant the vegetation identified in Figure 4.
4. Respondents agree to place a conservation easement preventing further development of at least the areas defined in green and black identified in Exhibit 2, Figure 2. Respondents agree that an experienced wetland ecologist will be

onsite at the time of grading, planting, and monitoring.

41. Respondents shall conduct the work in accordance with the June 10, 2013 letter, included as Exhibit 2. Respondents shall complete the grading and planting work by July 8, 2013, unless a later date is approved by EPA. Respondents shall monitor and maintain the restored areas for 5 years in accordance with the *Wetland Restoration Report*, Exhibit 2. The Respondents shall correct any problems that are identified as a result of the long-term monitoring within 10 days of the problem being identified, or such longer time as approved by EPA.
42. Respondents have provided EPA with an estimate of the cost to complete the restoration work required by this Order, including long-term monitoring, and have pre-paid an agreed upon amount to a qualified wetlands contractor to perform the work. The sole purpose of the estimate and prepayment is to ensure the wetlands restoration work required by paragraphs 39 and 40 are completed by July 8, 2013. If the work requires more than the estimated amount, then the Respondents shall pay that amount.
43. The Respondents estimate that the costs of long term monitoring will be approximately \$17,100.00 ("Future Costs") pursuant to paragraphs 41 and 42. The Respondents shall place \$8600.00 in escrow no later than November 1, 2013 with Respondents' legal counsel or prepaid to Ecotune Environmental Consultants, Inc. for Future Costs. Respondents shall place an additional \$8500.00 in escrow with Respondents' legal counsel or prepaid to Ecotune Environmental Consultants, Inc. for Future Costs no later than June 1, 2014. That notwithstanding, to ensure payment of Future Costs, should Respondents sell any

real property in the Polo subdivision after July 1, 2013, Respondents shall notify their counsel -- and Respondents' counsel shall notify EPA no less than twenty one days in advance of each closing date -- that Respondents are conveying a parcel of property located within the Polo subdivision to a third party. A copy of each HUD-1 statement reflecting the sale of each and every parcel of property shall be provided to EPA following each closing beginning with the first parcel sold after July 1, 2013. Following the sale of the first parcel of property after July 1, 2013 (i.e., beginning with the sale of the second parcel of real property after July 1, 2013), Respondents shall place \$8,600 from the proceeds of sale of each parcel in escrow or prepay Ecotune Environmental Consultants, Inc. for Future Costs each time that the sale of a parcel of real property occurs, until the Future Costs have been funded. Thereafter, unless Respondents have failed to pay the mediation costs or the civil penalties or escrowed/prepaid the Future Costs, Respondents have no continuing obligation to provide their counsel or EPA with any notice of sale of future parcels of real property located within the Polo subdivision or with any HUD-1 statement.

44. Respondents will complete the restoration required by paragraphs 39 and 40 regardless of whether the Future Cost estimate or funding identified in paragraph 43 is sufficient to complete that work.
45. Respondents shall provide EPA with written notice two days before they commence or complete the restoration actions required by paragraphs 39 and 40 above.
46. Within 30 days of completion of the restoration work required by paragraphs 39

and 40, Respondents shall submit to EPA written certification that Respondents have restored the Site in accordance with the Agreed Order (Section VI of this CAFO) and Exhibit 2. Such certification must include photographs and/or videotape and an "as built" vertical survey drawings providing topographic information documenting the completed restoration activities throughout the site. By July 31, 2013, Respondents shall submit to EPA for review and approval the conservation easement required by paragraph 40 above. The conservation easement shall be consistent with the requirements for such easements in the State of Ohio. Respondents shall complete all steps, including recording, to finalize the conservation easement within 30 days after it receives EPA's approval of its conservation easement.

47. When Respondents complete the work required by the Agreed Order, they may request EPA for a determination of whether they have satisfactorily completed the work. If EPA determines that the work is satisfactorily completed and all penalties have been paid, EPA will notify the Respondents in writing and terminate this CAFO. If EPA determines that the work is not satisfactorily completed or that penalties have not been paid, it will notify the Respondents in writing. Respondents will correct or complete the work EPA identifies as incomplete or deficient within the time specified by EPA and pay any outstanding penalties.

48. During business hours and upon verbal or written notice, Respondents shall allow EPA, the United States Army Corps of Engineers, or their authorized representatives access to Lot #1 to determine compliance with the Agreed Order

and the CWA.

49. Respondents must certify all submittals required by this CAFO to be true, accurate and complete and submit them under authorized signature to the following:

Melanie Haveman, Enforcement Officer
Watersheds and Wetlands Branch
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604, and

Richard J. Clarizio, Associate Regional Counsel
U.S. Environmental Protection Agency (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

EPA may use the information requested herein in an administrative, civil, or criminal action. This information is not subject to the Paperwork Reduction Act because it is for use in an active enforcement action.

50. Violation of the terms of this CAFO may result in further enforcement action under section 309(b) of the CWA, 33 U.S.C. § 1319(b). Specifically, U.S. EPA may seek civil judicial penalties of up to \$37,500 for violations occurring after January 12, 2009. Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under section 309(c) of the CWA, 33 U.S.C. § 1319(c).

RESPONDENTS
Polo Development, Inc.

Donna M. Zdrilich
Donna M. Zdrilich, President

7-22-13
Date

AIM Georgia, LLC

Donna M. Zdrilich

Donna M. Zdrilich, Managing Member

7-22-13

Date

Joseph M. Zdrilich

Joseph M. Zdrilich

Joseph M. Zdrilich

7-22-13

Date

COMPLAINANT

U. S. Environmental Protection Agency,
Region 5,

Tinka G. Hyde

Tinka G. Hyde
Director

8/14/13

Date

**In the Matter of: Polo Development, Inc., AIM Georgia, LLC and Joseph Zdrilich
Docket No.: CWA-05-2013-0003
Consent Agreement and Final Order**

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Susan Hedman
Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date