



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 10, 1200 Sixth Avenue, Seattle, Washington 98101
EXPEDITED SETTLEMENT AGREEMENT
Construction Stormwater Violations

Docket Number: CWA-10-2024-0197 NPDES No. WAR312451

Penalty Amount: \$2,220, Inspection Date: January 22, 2024

HD Fowler Corporation (“Respondent”) is a “person,” within the meaning of Section 502(5) of the Clean Water Act (“Act”), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an “Expedited Settlement Offer Worksheet” (“Settlement Worksheet”), which is incorporated by reference. By its signature, Complainant (“EPA”) finds that Respondent is responsible for the alleged violations specified in the Settlement Worksheet.

Respondent failed to comply with the condition(s) or limitation(s) of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any “person” who “discharges pollutants” from a “point source” to “waters of the United States.” Respondent neither admits nor denies the alleged violations specified in the Settlement Worksheet or this Consent Agreement and Final Order (“Agreement”).

EPA is authorized to enter into this Agreement under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement to settle the civil violation(s) alleged in this Agreement for a penalty of \$2,220. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the finding(s) specified in the Settlement Worksheet; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the alleged violations identified in the Settlement Worksheet have been corrected. Respondent shall submit a written report and other documentation with this Agreement detailing the specific actions taken to correct the alleged violations cited herein. This documentation may include monitoring, inspection and maintenance reports, documentation of corrective actions, certification records, and other records required for compliance with permit documentation and recordkeeping conditions.

Respondent certifies that, within ten (10) days after receipt of the Final Order, Respondent will submit electronic payment via: www.pay.gov or submit a bank, cashiers, or certified check, with case name and docket number noted, for the amount specified above, payable to the “Treasurer, United States of America,” via certified mail, to:

Regional Hearing Clerk
U.S. EPA, Region 10
Fines and Penalties, Cincinnati Finance Center
In the Matter of: HD Fowler Corporation
Docket No.: CWA-10-2024-0197
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent agrees that consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), it will not deduct the penalties paid under this Agreement for federal tax purposes.

This Agreement settles EPA’s civil penalty claims against Respondent for the alleged Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected alleged violation(s) described in the Settlement Worksheet. EPA has determined this Agreement to be appropriate.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, EPA will provide a copy of the Agreement to the state of Washington for the purposes of consultation with Washington on the appropriateness of this Agreement. EPA will also provide public notice of this Agreement and a reasonable opportunity for public comment on it. EPA will address any comments on the Agreement in accordance with section 309(g)(1) and (4)(A) of the Act, 33 U.S.C. § 1319(g)(1) and (4)(A), and 40 CFR §§ 22.38 and 22.45.

This Agreement is binding on the parties signing below and becomes final 30 days from the date it signed is by the Regional Judicial Officer, unless a petition to set aside this Agreement is filed by a commenter pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1391(g)(5), following public notice of this Agreement.

APPROVED BY RESPONDENT:

Name
(print): _____

Title
(print): _____

Signature: _____ Date: _____

APPROVED BY EPA:

_____ Date: _____

Edward J. Kowalski, Director
Enforcement and Compliance Assurance Division

More than 40 days have elapsed since providing the Agreement to Washington and the issuance of public notice pursuant to Section 309(g)(1) and (4)(A) of the Act, 33 U.S.C. § 1319(g)(1) and (4)(A), and EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law,
IT IS SO ORDERED:

_____ Date: _____

Regional Judicial Officer
Region 10
U.S. Environmental Protection Agency



FINDINGS and ALLEGED VIOLATIONS

Expedited Settlement Offer Worksheet

Consult instructions regarding eligibility criteria and procedures prior to use

version: June 2019

	LEGAL NAME(s) AND MAILING ADDRESS(ES)	TELEPHONE NUMBER(s)	NPDES Permit Number			
1	Operator 1		WAR312451			
	Cyle Boeck, Project Manager					
	HD Fowler SR-3 Industrial Stock Yard		Inspection Information			
	Intersection of SR-3 and SW Birt Drive		Inspector Agency:	EPA		
	Port Orchard, Washington 98642		Entrance Interview Conducted:		Yes	
			Exit Interview Conducted:		Yes	
	Operator 2:		Exit Interview given to:	Kyle Webb amd Reuben Halme		
	Kyle Webb, Superintendent		Exit Interview time:	12:00 PM	Date:	01/22/2024
	Tapani Inc.					
	Intersection of SR-3 and SW Birt Drive		Inspector Name:	Jon Klemesrud and Emily Siangkam		
	Port Orchard, Washington 98642					
	LOCATION AND ADDRESS OF SITE					
2	HD Fowler SR-3 Industrial Stock Yard					
	Intersection of SR-3 and SW Birt Drive					
	Port Orchard, Washington 98642					
	FACILITY DESCRIPTION / CONTACT NAMES					
3	Name of Site Contact (ESO Worksheet recipient):		Cyle Boeck, Project Manager; Kyle Webb, Superintendent with Tapani, Inc.; and Reuben Halme, Civil Superintendent with Tapani, Inc.			
	Name of Authorized Official (40 CFR 122.22):					
	Inspection Date:		01/22/2024			
	Start Construction Date:		09/01/2023			
	Estimated Completion Construction Date:		08/01/2024			
	If Unpermitted, Number of Months Unpermitted:					
	Name of Receiving Water Body (Indicate whether 303(d) listed):		Gorst Creek			
	Acres Disturbed Acres for Whole Common Plan:		8.16			
	Has Operator Requested Rainfall Erosivity or TMDL Waiver per 44 CFR 122.26(b)(15)?		No			

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
SWPPP REVIEW									
10		SWPPP does not include:							
11		Site Map							
	B	Site map does not include all elements required by the Permit. (Count each omission as one violation up to \$600.)	Additional discharge point location - catch basin that discharges to rip rap area at SR-3 roadside ditch not identified in facility's SWPPP site map.	S9.E.8		1	X	\$60	\$60
12		SWPPP does not:							
	B	Describe the specific controls to be implemented to meet the effluent limits for erosion and sediment controls. (Count one violation for each missing control measure up to a maximum of \$900.)	Missing controls for catch basin discharge to SR-3 roadside ditch that's required to be monitored and be within pH and turbidity limits and accumulated sediment observed at discharge location	S9.C.1, S9.D.4 and S9.D.10		1		\$300	\$300
21	A	SWPPP (including site map) has not been updated/modified as required by the Permit. (Count each omission as one violation.)	SWPPP not updated to include catch basin discharge and BMPs and required sampling to prevent pollution. SWPPP not updated to reflect dewatering discharge to onsite vegetative area for infiltration rather than to sedimentation trap or pond.	S9.B.2		2	X	\$60	\$120
INSPECTIONS									
26		Site inspection report does not include all information required by the Permit. (Count each omission as one violation.)	Weekly inspection reports do not include turbidity and pH sampling data for catch basin discharge point that discharges to SR-3 roadside ditch (rip rapped area) for each week there was at least 0.5" rain in any one day of that week between when the first DMR of permit coverage was due on July 15, 2023 up until EPA's inspection in January 22, 2024 = 14 weeks	S4		14	X	\$60	\$840
BEST MANAGEMENT PRACTICES									
28		General Maintenance Requirements:							
	A	Failure to ensure that all stormwater controls are maintained and remain in effective operating condition (i.e., all routine maintenance-and corrective actions are performed within the timeframes required by the Permit). (Count each failure to timely maintain each control as one violation.)	"Permittees must maintain and repair all temporary and permanent erosion and sediment control BMPs as needed to assure continued performance of their intended function in accordance with BMP specifications." The Stormwater Management Manual for Western Washington (July 2019) lists maintenance standards for BMP C233 (Silt Fence) which includes: "Remove sediment deposits when the deposit reaches approximately one-third the height of the silt-fence or install a second silt-fence. At the time of inspection, a section of silt fence along the western perimeter was observed to be in need of maintenance based upon the written standard.	S9.D.11		1	X	\$300	\$300
		Control measures are not properly selected, installed or maintained:							

		Findings	CGP Citation	RCA*	No. of Deficiencies		Penalty Amount	Total	
38		Failure to protect storm drain inlets by installing inlet protection measures that remove sediment from discharges prior to entry into a storm drain inlet. (Count each failure as one violation.)	Permit Condition S9.D.7. states: "Protect all storm drain inlets made operable during construction so that stormwater runoff does not enter the conveyance system without first being filtered or treated to remove sediment."; At the time of inspection, no inlet protection was observed to be installed for the identified catch basin that discharged to rip rap area at SR-3 roadside ditch.	S9.D.7		1	X	\$600	\$600
		Pollution Prevention Requirements							
SMALL BUSINESS EVALUATION									
52		Is the Owner/Operator a Small Business?	Yes					Yes or No	
		<i>A small business</i> is defined by EPA's Small Business Compliance Policy as: "a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business)." The number of employees should be considered as full-time equivalents on an annual basis, including contract employees (see 40 CFR 372.3). A full time employee unit is 2000 hours worked per year.							
TOTAL EXPEDITED SETTLEMENT:								\$2,220	