



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
INDUSTRIAL STORMWATER ESA

IN THE MATTER OF:

Van Smith Company, Inc.

Respondent.

) DOCKET NO.: CWA-04-2020-0319(b)

) Expedited Settlement Agreement and Final Order  
) Pursuant to Clean Water Act Section 309(g)(2)(A)

) NPDES Permit No. Unpermitted

The undersigned representative of the United States Environmental Protection Agency (EPA) and Van Smith Company, Inc., a corporation, (Respondent) enter into this Expedited Settlement Agreement (Agreement) to resolve Respondent's civil penalty liability for allegedly discharging industrial stormwater without a permit at the Site. On November 7, 2018, representatives of EPA inspected the Respondent's facility at 1110 Drop Off Dr, Summerville, SC 29483 (Site).

Based on information obtained during the EPA inspection, the EPA finds that: (1) Respondent, who is an owner of the Site, discharged industrial stormwater from the Site without authorization by any permit issued pursuant to the Clean Water Act (Act) in violation of Section 301 of the Act, 33 U.S.C. § 1311; (2) Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5); and (3) Respondent is responsible for the alleged violations specified in the attached "Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form" (Alleged Violations Form). The Alleged Violations Form is hereby incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Respondent neither admits nor denies the factual allegations alleged in the Alleged Violations Form.

The EPA is authorized to enter into this Agreement under the authority vested in the Administrator by Section 309(g) of the Act, 33 U.S.C. § 1319(g), and by 40 C.F.R. § 22.13(b) and § 22.18.

Respondent consents to the assessment of a civil penalty and agrees to pay \$40,000. Respondent waives the right to: (1) contest the allegations in the Alleged Violations Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); (3) appeal the Final Order; and (4) judicial review pursuant to CWA § 309 (g)(8), 33 U.S.C. § 1319(g)(8). The civil penalty will be due within thirty (30) days of the Effective Date of this Expedited Settlement Agreement and Final Order and shall be made in accordance with the attached Expedited

Settlement Agreement Payment Instructions (Payment Instructions), incorporated herein by reference. Respondent agrees to bear its own costs and attorney's fees related to this ESA.

Failure by Respondent to pay the penalty assessed by this ESA and Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to CWA § 309(g)(9)(B), 33 U.S.C. § 1319(g)(9)(B). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the State of South Carolina was provided a prior opportunity to consult with the EPA regarding this matter.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Alleged Violations Form have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; and (2) consistent with Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of Section 301(a) of the Clean Water Act alleged in the Alleged Violations Form. This Agreement does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order, e.g., for any uncorrected violations listed in the Alleged Violations Form. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

The EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on the proposed issuance of this Agreement prior to issuance of the

Final Order pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45.

mail to the e-mail addresses provided by the parties in the Certificate of Service.

If Respondent does not sign and return this ESA as presented within 30 days of the date of its receipt, or within an extension timeframe approved by EPA, this proposed ESA is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Alleged Violations Form.

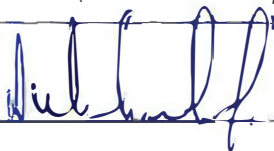
This Agreement is binding on the parties signing below. Each person signing this Agreement certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The Expedited Settlement Agreement and Final Order are effective the date of filing with the Regional Hearing Clerk. Once the ESA is signed by the Regional Judicial Officer, the original ESA will be filed with the Regional Hearing Clerk. A copy of the filed ESA will be emailed to Respondent.

The parties consent to service of this ESA and Final Order by e-

APPROVED BY RESPONDENT:

Name (print): D Van Smith Jr

Title (print): President, Van Smith Company, Inc.

Signature:  Date: 12/3/2020

APPROVED BY THE EPA:

Mary Jo Bragan, Chief, Water Enforcement Branch  
Enforcement and Compliance Assurance Division

FINAL ORDER

Having determined that this Agreement is authorized by law, the foregoing Expedited Settlement Agreement is hereby incorporated into the Final Order.

IT IS SO ORDERED:

Tanya Floyd  
Regional Judicial Officer

Attachments:

1. Alleged Violations Form
2. Payment Instructions

## **ENCLOSURE A**

### **Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form**

1. Van Smith Company, Inc. (Respondent) owns and operates the concrete ready-mix facility located at 1110 Drop Off Dr., Summerville, South Carolina (Facility). The Facility is identified by Standard Industrial Classification (SIC) Code 3273.
2. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a National Pollution Discharge Elimination System (NPDES) permit is required for “a [stormwater] discharge associated with industrial activity.”
3. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), “[f]acilities classified within Standard Industrial Classification... 32 (except 323)...” which would include SIC Code 3273 are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. 122.26(b)(14).
4. On November 7, 2018, representatives of the EPA, in conjunction with the South Carolina Department of Health and Environmental Control (SCDHEC), performed a Compliance Stormwater Evaluation Inspection (CSWEI) at Respondent’s Plant 4 Facility at 1110 Drop Off Dr. to evaluate the Respondent’s compliance with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311 and the regulations promulgated thereunder at 40 C.F.R. § 122.26.
5. On December 21, 2018, the EPA issued an Inspection Report to the Respondent. During the CSWEI, the EPA inspectors observed the following:
  - A. The facility had outdoor industrial processes, including but not limited to, process equipment, material storage, product storage, and equipment maintenance and cleaning activities with potential exposure and contribution to stormwater contamination.
  - B. The Plant 4 Facility is a ready-mix concrete manufacturer (SIC Code 3273) but had not submitted an Notice Of Intent for coverage under the existing NPDES General Permit for Storm Water Discharges Associated with Industrial Activities, Permit No. SCR000000.
6. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. § 122.26(b)(14)(vi), as referenced above, require that an industrial facility discharging stormwater into a surface water of the United States must obtain an NPDES permit. The EPA’s industrial stormwater guidance anticipates potential discharges from an industrial site to occur with rain events greater than 0.1 inch. In EPA’s industrial penalty policy, 0.5 inches during a 24-hour period is used as the benchmark for likely stormwater runoff. According to the rain data available for this area, fifty-two (52) of the sixty (60) months during the period of February 2014 to January 2019 have had one or more daily rain events greater than 0.5 inches. Due to the hydrology of the Facility and rainfall data, the EPA has determined that from February 2014 to January 2019, stormwater

associated with industrial activities generally traveled towards the conveyance along the north side and the wetland along the south side of the site. These conveyances direct runoff west towards Kelly Branch which is approximately 0.6 miles downstream and/or Stanley Branch which is approximately 0.3 miles south. The Kelly and Stanley Branch flow southwest to the Ashley River approximately 12 miles downstream. Ashley River is listed as an impaired water for dissolved oxygen.

7. Ashley River is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and its implementing regulation 40 C.F.R. § 122.2.
8. Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater from the Facility without proper authorization to waters of the United States.
9. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b), and in accordance with the EPA's September 8, 2016 Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements, the EPA is assessing a penalty of \$40,000 for the above-mentioned violations.



## **Enclosure B**

### **Expedited Settlement Agreement and Final Order Payment Instructions**

Payment shall be in a single payment, due no later than 30 calendar days from the effective date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall:

- designate the name and docket number of this case, and
- be payable to “Treasurer, United States of America.”

The payment shall be remitted as follows:

#### **If remitted by regular U.S. mail:**

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

#### **If remitted by any overnight commercial carrier:**

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”



**If remitted through the Automated Clearing House (ACH) for receiving US currency:**

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

**If remitted on-line with a debit card or credit card:** No user name, password, or account number is necessary for this option. On-line payment can be accessed via [www.pay.gov](http://www.pay.gov), entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent by mail and/or email to:

Saundi Wilson, Regional Hearing Clerk  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
Email: R4\_Regional\_Hearing\_Clerk@epa.gov

and

Ahmad Dromgoole  
U.S. EPA Region 4  
Water Enforcement Branch  
Enforcement and Compliance Division  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Expedited Settlement Agreement and Final Order, in the Matter of **Van Smith Company, Inc. , Docket No.CWA-04-2020-0319(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

**To Respondent:** Mr. Ethan Ware c/o Van Smith, Jr., President  
Van Smith Company, Inc.  
Williams Mullen  
P.O. Box 8116 (29202)  
Columbia, South Carolina 29201  
eware@williamsmullen.com  
(803) 567-4610

**To EPA:** Mr. Ahmad Dromgoole, Water Enforcement Branch  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960  
(404) 562-9212  
Dromgoole.Ahmad@epa.gov

Michele Wetherington, Associate Regional Counsel  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960  
(404) 562-9613  
wetherington.michele@epa.gov

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Regional Hearing Clerk  
U.S. EPA Region 4  
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