



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 09 2009

**CERTIFIED MAIL 7008 2810 0000 4316 3001**  
**RETURN RECEIPT REQUESTED**

Conservancy Partnership, LLC  
Attn: Theodore M. Burt, Esquire  
114 Northeast First Street  
Post Office Box 308  
Trenton, Florida 32693

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2009-5511(b)

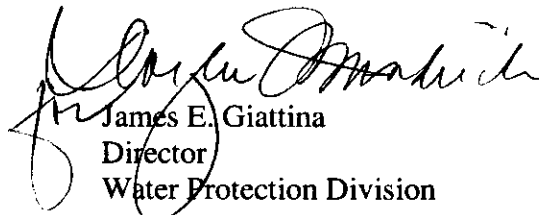
Dear Mr. Burt:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) that has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section V. Payment.

Please be advised that this CAFO does not supersede the terms for Site Restoration as outlined in the Administrative Compliance Order (Order) Docket No. CWA-04-2007-5757 issued September 11, 2007. The final restoration plan was submitted via your letter dated April 21, 2008. Pursuant to the Order and restoration plan, there are two annual monitoring events remaining. We look forward to receiving the annual monitoring reports at the end of October 2009 and October 2010.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Peg Kroening, Associate Regional Counsel, at (404) 562-9579.

Sincerely,

  
James E. Giattina  
Director  
Water Protection Division

Enclosure

cc: U.S. Corps of Engineers, Jacksonville District  
Florida Department of Environmental Protection  
Suwannee River Water Management District

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

Conservancy Partnership, LLC )  
Trenton, Florida, )

RESPONDENT. )

) ADMINISTRATIVE  
) CONSENT AGREEMENT AND  
) FINAL PENALTY ORDER

) Docket No.: CWA-04-2009-5511(b)

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**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding under Section 309(g)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1), 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*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22).

2. The authority to take action under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), is vested in the Administrator of the United States Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator of Region 4, who in turn has redelegated this authority to the Director of the Water Protection Division of EPA Region 4 (Complainant).

**II. Statutory and Regulatory Background**

3. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), states "[w]henver, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)]."

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1344], the discharge of any [dredged or fill material] by any person shall be unlawful." Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . ."

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

9. Federal regulations under 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

### **III. Allegations**

10. The term “Discharge Area” means the jurisdictional waters that have been impacted either through filling or dredging as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is located southeast of Fifth Avenue North and Sixth Street West, in the City of Steinhatchee, Taylor County, Florida, near 29° 40.83’ north latitude and 83° 24.33’ west longitude. The Discharge Area is indicated on the enclosed Exhibits A and B.

11. The term “Site” means the parcel or parcels of land on which the Discharge Area is located.

12. Respondent, Conservancy Partnership, LLC, at all times relevant to this Consent Agreement and Final Order, was the owner and operator of the Site.

13. Conservancy Partnership, LLC, is a person within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Commencing on or about June 2005, until August 2005, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into the discharge Area using earth moving machinery, during unauthorized activities associated with the ditching, mechanical land clearing and filling of wetlands on the Site.

15. Respondent impacted approximately 16.8 acres of forested wetlands and tidal salt marsh adjacent to the Steinhatchee River, which is a traditionally navigable water of the United States.

16. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA § 502(6).

17. The earth moving machinery and mechanical land clearing equipment employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA § 502(14).

18. Respondent's placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA § 502(12).

19. At no time during the discharge of dredged and/or fill material at the Discharge Area from June 2005, until August 2005, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes one day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### **IV. Stipulations and Findings**

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

22. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and the factual allegations set out above.

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

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

25. By signing this CA/FO, 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. 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.

26. EPA reserves the right to assess and collect any and all civil penalties for any violation described in this Consent Agreement to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

27. Complainant and 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.

**V. Payment**

28. Under Section 309(g)(2)(b) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that SIXTY FIVE THOUSAND DOLLARS (\$65,000) plus Interest is an appropriate civil penalty to settle this action. Respondent shall submit quarterly payments of FIVE THOUSAND SIX HUNDRED THIRTY-NINE DOLLARS AND 28 CENTS (\$5,639.28) over a 3 year period in accordance with the following schedule:

Payment Due Date	Payment Due
September 30, 2009	\$5,639.28
December 30, 2009	\$5,639.28
March 30, 2010	\$5,639.28
June 30, 2010	\$5,639.28
September 30, 2010	\$5,639.28
December 30, 2010	\$5,639.28
March 30, 2011	\$5,639.28
June 30, 2011	\$5,639.28
September 30, 2011	\$5,639.28
December 30, 2011	\$5,639.28
March 30, 2012	\$5,639.28
June 30, 2012	\$5,639.28

Payment of the remaining balance of the penalty may be made prior to the schedule listed above. To pay early, Respondent shall contact EPA sixty (60) days prior to making the final payment to determine the remaining balance owed on the penalty.

29. Respondent shall submit payment of each installment of the penalty in accordance with the schedule set forth in the preceding paragraph 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 submitted by U.S. Postal Service to:

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

For payments submitted by any overnight mail service (Fed Ex, UPS, DHL, etc.):

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

30. At the time of payment, 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:

U.S. Environmental Protection Agency, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
ATTN: Ms. Patricia Bullock – Regional Hearing Clerk

and

Ms. Mary E. Halback  
Wetlands Enforcement Section  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

31. Civil penalty payments under this CA/FO are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

32. Under 40 C.F.R. § 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive each installment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for

each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

33. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the 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.

## **VI. General Provisions**

34. This CA/FO shall not relieve 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 under federal laws and regulations administered by the EPA.

35. 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 Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit, other than as expressed herein.

36. Except as otherwise set forth in this document, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth in this document, compliance with this CA/FO shall resolve the allegations of violations contained in this CA/FO. 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 in this document, Complainant does not waive any right to bring an enforcement action against 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.

37. 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.

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

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

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

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

For Complainant:

Margaret Kroening  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9579

For Respondent:

Conservancy Partnership, LLC  
Attn: Theodore M. Burt, Esquire  
114 Northeast First Street  
Post Office Box 308  
Trenton, Florida 32693  
(352) 463-2348

42. 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.

43. Under 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 Florida was provided a prior opportunity to consult with Complainant regarding this matter.

44. This CA/FO in no way affects the rights of the Complainant as against any person or entity not a party to this CA/FO.

## **VII. Release by Respondent**



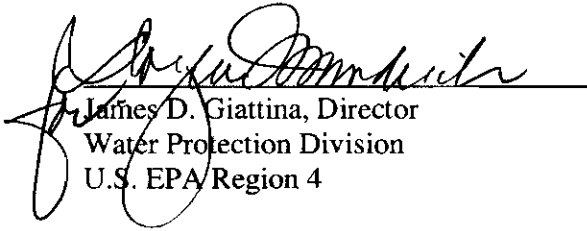
45. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the Site or this CA/FO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.

**VIII. Effective Date**

46. 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 COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
James D. Giattina, Director  
Water Protection Division  
U.S. EPA Region 4

Date: 9/13/09

For RESPONDENT:

  
Name Jerry Sims Title managing  
Conservancy Partnership, LLC member

Date: 8/13/09

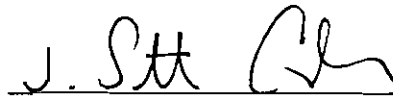
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
)  
) ADMINISTRATIVE  
Conservancy Partnership, LLC. ) CONSENT AGREEMENT AND  
Trenton, Florida ) FINAL PENALTY ORDER  
)  
RESPONDENT. ) Docket No.: CWA-04-2009-5511(b)  
\_\_\_\_\_ )

**FINAL ORDER**

In accordance with 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*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
A. Stanley Meiburg  
Acting Regional Administrator  
U.S. EPA, Region 4

Date: 9/8/09

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2009-5511(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Laurie Lindquist  
Enforcement Officer  
U.S. EPA, Region 4  
Wetlands Enforcement Program  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

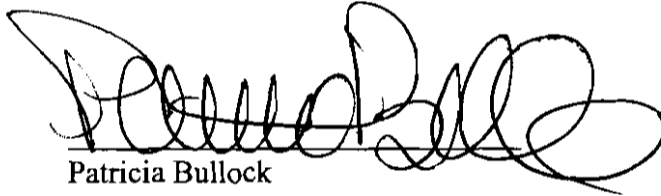
By hand-delivery:

Korening  
Attorney Advisor  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By Certified mail,  
return receipt requested:

Conservancy Partnership, LLC  
ATTN: Theodore M. Burt, Esquire  
114 Northeast First Street  
Post Office Box 308  
Trenton, Florida 32693

Dated: 9-9-09



Patricia Bullock  
Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511