



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 09 2009

CERTIFIED MAIL 7007268000096211775
RETURN RECEIPT REQUESTED

Village of Holiday Lake
Property Owners Association
c/o Nancy Leighton, Manager
7500 Loris Court
Port Charlotte, Florida 33981

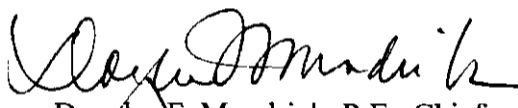
Re: Consent Agreement and Final Order
Docket No. CWA-04-2009-5507(b)

Dear Ms. Leighton:

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.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Laurie Lindquist of my staff at (404) 562-9249, or your attorney can contact Ms. Laurie Dubriel, Attorney-Advisor, at (404) 562-9574.

Sincerely,



Douglas F. Mundrick, P.E., Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: U.S. Army Corps of Engineers, Jacksonville District
U. S. Corps of Engineers, Jacksonville District, Fort Myers Regulatory Office
Florida Department of Environmental Protection
U.S. Fish & Wildlife Service, South Florida Ecological Field Office
Katherine R. English, Pavese Law Firm

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

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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 0.018 acres on the Butterford Canal located in the residential community of Village of Holiday Lake of Charlotte County Property Owners Association, Inc. at 13749 Marathon Boulevard in Section 09, Township 41 South, Range 21 East, Port Charlotte, Charlotte County, Florida, at approximately 26° 55’ 0.85” north latitude and 82° 12’ 44.95” west. 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. Village of Holiday Lake of Charlotte County Property Owners Association, Inc. (“Respondent”), at all times relevant to this Consent Agreement and Final Order, was the owner and operator of the Site located on the parcel of land at 13749 Marathon Boulevard in Section 09, Township 41 South, Range 21 East, Charlotte County, Florida, at approximately 26° 55’ 0.85” north latitude and 82° 12’ 44.95” west longitude (the “Site”) that contained the Discharge Area.

13. Respondent, is a corporation duly organized and existing under the laws of the State of Florida and, as such, 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 July 10, 2006, to November 13, 2006, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into waters on the Site using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for the construction of a boat ramp and multi-family boat dock for Respondent's residential development.

15. Respondent impacted approximately 0.018 acres on the Butterford Canal ("Discharge Area") a navigable-in-fact water and also a tributary to the Myakka River, a 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 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 July 10, 2006, to November 13, 2006, 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 a 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 of 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 will simultaneously commence and conclude this matter.

22. For the purposes of this Consent Agreement and Final Order ("CA/FO"), Respondent admits the jurisdictional allegations set out above and neither admits or denies 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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that twelve thousand five hundred dollars (\$12,500) is an appropriate civil penalty to settle this action.

29. 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 submitted by U.S. Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 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, Missouri 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:

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

and

Ms. Laurie Lindquist
U.S. Environmental Protection Agency
Atlanta Federal Center / Region 4
Wetlands Enforcement Section / 15th Floor
61 Forsyth Street
Atlanta, Georgia 30303

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 payment of the penalty assessed by this CAFO 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 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.

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. Other than as expressed in this document, Respondent does not waive any right or defenses against an enforcement action brought by Complainant for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or pursuit of 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 C/AFO 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:

Laurie Dubriel
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9574

For Respondent:

Paul Dow
Village of Holiday Lake of Charlotte County Property
Owners Association, Inc.
7500 Loris Court
Port Charlotte, Florida 33981
(941) 697-1333

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 Alabama 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.

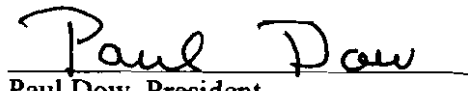
AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


Douglas F. Mundrick, P.E., Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 8/31/09

For RESPONDENT:


Paul Dow, President
Village of Holiday Lake of Charlotte County Property Owners Association, Inc.
7500 Loris Court
Port Charlotte, Florida 33981

Date: 23 July 2009

VILLAGE OF HOLIDAY LAKE OF
CHARLOTTE COUNTY PROPERTY
OWNERS ASSOCIATION, INC.,
PORT CHARLOTTE, FLORIDA,

RESPONDENT.

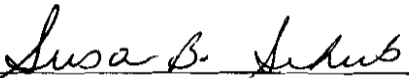
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) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
)
)
)

) Docket No.: CWA-04-2009-5507(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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Susan B. Schub
Regional Judicial Officer

Date: Sept. 8, 2009

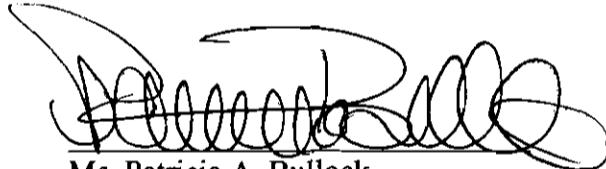
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **ADMINISTRATIVE CONSENT AGREEMENT AND FINAL PENALTY ORDER** in the matter of Village of Holiday Lake **Docket No. CWA-09-5507(b)** filed with the Regional Hearing Clerk on SEP 09 2009, 2009) was served on SEP 09 2009, 2009, in the manner specified to each of the persons listed below.

By hand-delivery: Laurie Lindquist
Enforcement Officer
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By hand-delivery: Laurie Dubriel
Attorney Advisor
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: Nancy Leighton
Village of Holiday Lake
7500 Loris Court
Port Charlotte, Florida 33981



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511