



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

[JUL 14 2009

CERTIFIED MAIL 7008 2810 0000 4316 9744
RETURN RECEIPT REQUESTED

Mr. Michael L. Jones
Wendell Falls Development, LLC
5660 Six Forks Road, Suite #202
Raleigh, North Carolina 27607


Re: Consent Agreement and Final Order
Docket No. CWA-04-2009-4522(b)
Wendell Falls Parkway
Wendell, North Carolina

Dear Mr. Jones:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Ms. Araceli Bonilla at (404) 562-9790.

Sincerely,



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

Enclosure

cc: North Carolina Department of Natural
Resources, Division of Water Quality
North Carolina Department of Natural
Resources, Division of Land Resources

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
WENDELL FALLS DEVELOPMENT, LLC)
WENDELL FALLS PARKWAY)
WENDELL , NORTH CAROLINA)
)
RESPONDENT.)
_____)

RECEIVED
EPA REGION 4
2009 JUN 14 AM 10:28
CLEMSON

DOCKET NO. CWA-04-2009-4528(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), 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*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

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

II. Allegations

3. At all times relevant to this action, Wendell Falls Development, LLC ("Respondent"), was a limited liability corporation formed under the laws of the State of North Carolina existing under the laws of the State of North Carolina and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a construction site known as Wendell Falls Parkway ("Development") located at Martin Pond Road and US 64 in Wendell, North Carolina.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of

pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the State of North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG010000 ("Permit") in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective October 1, 2001, reissued on October 3, 2006, and expired September 30, 2008. The Permit was administratively extended to June 30, 2009, or until such prior time as a new draft permit is finalized.

8. The NCDENR Division of Land Resources, Land Quality Section or an approved local program, in this case the Wake County Division of Water Quality ("Wake County"), is responsible for the compliance and enforcement of the Permit, and the approval of coverage under the Permit upon submission and approval of an Erosion and Sedimentation Control Plan ("Plan") prior to commencement of construction.

9. In May 2007, Respondent submitted a Plan to Wake County seeking approval of coverage under the Permit. Wake County issued its approval of the Plan in June 2007.

10. Part I.A.2 of the Permit requires the implementation of the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit, unless to correct an emergency or to make a minor modification, in which case the deviation must be noted on the approved Plan.

11. Part I.B.3 of the Permit requires the Permittee to keep a record of inspections, to be made available upon request. Such record shall include visible sedimentation found outside the disturbed limits of the site, an explanation of measures taken to control future releases, and measures taken to clean up sediment beyond the disturbed limits of the site.

12. Part I.C.2 of the Permit requires the Permittee to provide operation and maintenance necessary to operate storm water controls at optimum efficiency

13. Part II.B.2 of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment.

14. Part II.C.1 of the Permit requires the Permittee to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the Permit.

15. On September 25, 2008, representatives of EPA, in conjunction with NCDENR and Wake County, performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 Code of Federal Regulations ("C.F.R.") § 122.26, and the Permit.

16. As a result of the CSWEI, EPA Region 4 determined that storm water associated with industrial activity was discharged from the Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

17. During the CSWEI, EPA inspectors observed the following:

A. The Plan was not implemented as approved, as required by Part I.A.2 of the Permit. There was silt fencing along the unnamed tributary of Marks Creek between SF-1 and SF-2 that was not denoted on the approved Plan. A rock pipe inlet sediment trap Type-A was not installed on the northern portion of the stream crossing as per the approved Plan.

B. Inspection reports were missing for the following dates: 01/24/08, 02/20/08, 02/27/08, 03/05/08, 03/08/08, 03/16/08, 03/23/08, 03/30/08, 04/09/08, 04/16/08, 04/23/08, 05/05/08, 05/12/08, 05/19/08, 05/26/08, 06/10/08, 06/17/08, 06/23/08, 06/30/08, 07/10/08, 07/20/08, 07/31/08, 08/07/08, 08/21/08, 08/28/08, 09/01/08, 09/08/08, and 09/17/08, as required by Part I.B.3 of the Permit.

C. Storm water controls were not being operated and maintained at optimum efficiency, as required by Part I.C.2 and Part II.C.1 of the Permit, and discharges were not being minimized or prevented, as required by Part II.B.2 of the Permit. A check dam in the downstream portion of the stream crossing was not operating properly, and there was sediment loss into the unnamed tributary of Marks Creek. A drainage ditch on the eastern portion of the Development was stabilized with matting due to high velocity flow; however, there was evidence of sediment loss from the drainage ditch to the tributary of Marks Creek.

18. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the NCDENR Permit.

III. Stipulations and Findings

19. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or

testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

20. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

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

23. 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.

24. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein 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.

25. 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.

IV. Payment

26. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that **Seven Thousand Dollars (\$7,000.00)** is an appropriate civil penalty to settle this action.

27. Respondent shall submit payment of the penalty specified in the preceding paragraph via 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 tendered to:

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

28. 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, GA 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Programs Enforcement Branch
Water Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960.

29. The penalty amount specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

30. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment 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 percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

31. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject 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.

V. General Provisions

32. 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 pursuant to federal laws and regulations administered by EPA.

33. 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 CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

34. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, 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.

35. 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.

36. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

37. 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.

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

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

For Complainant:

Judy K. Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303-8960
(404) 562-9533.

For Respondent:

Michael L. Jones
Wendell Falls Development, LLC
5660 Six Forks Road, Suite 202
Raleigh, North Carolina 27607.

40. 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.

41. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

42. 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:

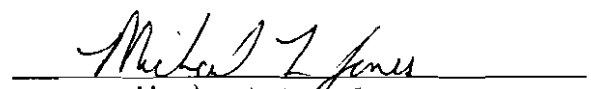
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 5/28/09

For RESPONDENT WENDELL FALLS DEVELOPMENT, LLC:


NAME: Michael L. Jones
TITLE: manager

Date: 5-13-09

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

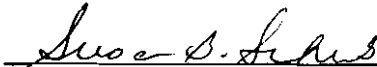
IN THE MATTER OF:)	CONSENT AGREEMENT AND
)	FINAL ORDER
WENDELL FALLS DEVELOPMENT, LLC)	
WENDELL FALLS PARKWAY)	
WENDELL , NORTH CAROLINA)	
)	DOCKET NO. CWA-04-2009-4522(b)
RESPONDENT.)	
_____)	

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*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to 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:

Date: 7/13/09



Susan B. Schub
Regional Judicial Officer

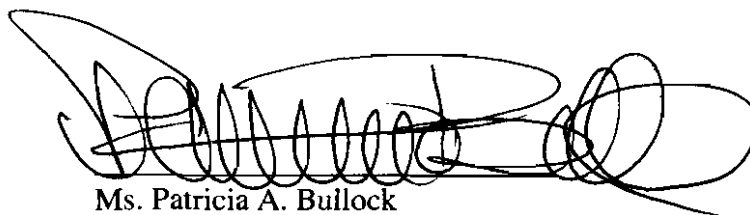
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Wendell Falls Development, LLC, **Docket No. CWA-04-2009-4522(b)** filed with the Regional Hearing Clerk on JUL 14 2009, 2009, was served on JUL 14 2009, 2009, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Michael L. Jones
Wendell Falls Development, LLC
5660 Six Forks Road, Suite 202
Raleigh, North Carolina 27607

Ms. Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617.



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 5/26/09 (Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733 (Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Wendell Fall Development - Wendell Falls Parkway, NC (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7,000 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2009-4522(b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office: Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: Date

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)