



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 20 2010

CERTIFIED MAIL 7006 0810 0004 1131 0370
RETURN RECEIPT REQUESTED

Mr. James Goodwin
Capstone Developers, LLC
P.O. Box 21971
Chattanooga, Tennessee 37424

Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-4514(b)
Wellesley Subdivision Phase III
Collegedale, Tennessee

Dear Mr. Goodwin:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. 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 Rebecca Fauver at (404) 562-9758.

Sincerely,

A handwritten signature in black ink, appearing to read "CESAR A. ZAPATA".

Cesar A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Tennessee Department of Environment
and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
CAPSTONE DEVELOPERS, LLC)
WELLESLEY SUBDIVISION PHASE III) DOCKET NO. CWA-04-2010-4514(b)
COLLEGEDALE, TENNESSEE)
)
RESPONDENT.)

RECEIVED
EPA REGION 4
2010 JUL 20 AM 7:37
HEARING CLERK

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 Protection Division who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 ("Complainant").

II. Allegations

3. Capstone Developers, LLC ("Respondent"), is a limited liability corporation formed under the laws of the State of Tennessee and is 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 Wellesley Subdivision Phase III ("Development") located at Bill Reid Road and Wellesley Drive, in Collegedale, Tennessee.

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. Pursuant to Section 402(b) of the CWA, EPA has granted the State of Tennessee, through the Department of Environment and Conservation ("TDEC"), approval to administer the NPDES program.

7. TDEC issued the *Tennessee General NPDES Permit For Discharges of Storm Water Associated with Construction Activities No. TNR100000* ("Permit") under the authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*) and the CWA. The Permit was issued on June 17, 2005, and expires on May 30, 2010. Regulated facilities must submit a Notice of Intent ("NOI") and a Storm Water Pollution Prevention Plan ("SWPPP") to TDEC, to gain Permit coverage.

8. TDEC is responsible for the approval of coverage under the Permit Regulations, upon submission of the NOI and SWPPP.

9. On July 24, 2006, Respondent submitted an NOI requesting permit coverage to TDEC. A Notice of Coverage was sent to Respondent with an effective date of June 17, 2006 and an expiration date of May 30, 2010.

10. Section 2.6.2 of the Permit requires that the NOI include a site map that clearly outlines the proposed construction area in relation to major roads, streams or other landmarks; identifies all outfalls; and identifies the receiving streams.

11. Section 3.3.1 of the Permit requires the retention of the SWPPP on-site, or at an alternate location along with an on-site posting of the alternate location and a contact phone number.

12. Section 3.5.1 of the Permit requires that the SWPPP include the following information:

A. A description of the topography including an estimation of the percent slope and the variation in percent slope found on the site;

B. An erosion prevention and sediment control map indicating drainage patterns and approximate slopes anticipated after major grading activities; and

C. The name of receiving waters and approximate size and location of affected wetland acreage.

13. Section 3.5.2 of the Permit requires the SWPPP to include:
 - A. A description of appropriate erosion and sediment controls and other Best Management Practices (“BMPs”) that will be implemented at the construction site; and
 - B. Erosion control drawings showing the approximate location of each control measure along with a description of the timing during the construction process for implementing each measure.

14. Section 3.5.3.1 of the Permit requires the design and implementation of erosion prevention and sediment controls as follows:
 - A. All control measures must be properly selected, installed, and maintained in accordance with the manufacturer’s specifications (where applicable) and good engineering practices. All control measures selected must be able to slow runoff so that rill and gully formation is prevented. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for relevant site situation;
 - B. Sediment should be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary and must be removed when design capacity has been reduced by 50%; and
 - C. The following records shall be maintained on or near the site: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; the dates when stabilization measures are initiated; inspection records and rainfall records.

15. Section 3.5.3.2 of the Permit requires the SWPPP to include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Temporary or permanent soil stabilization must be completed no later than 15 days after the construction activity in that portion of the site has temporarily or permanently ceased.

16. Section 3.5.4 of the Permit requires the installation of velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

17. Section 4.3.2 of the Permit requires that any storm water discharge does not cause an objectionable color contrast in the receiving water.

18. Section 5.2 of the Permit requires the retention of a copy of the SWPPP at the construction site (or other local accessible location) from the date construction commences to the date of termination of permit coverage. .

19. Section 6.4 of the Permit requires all reasonable steps be taken to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

20. Section 6.14 of the Permit requires the proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit and with the requirements of the SWPPP.

21. On September 26, 2008, representatives of EPA in conjunction with TDEC performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondent's Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the TDEC Permit.

22. On October 8, 2008, TDEC performed a CSWEI at Respondent's Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the TDEC Permit.

23. As a result of the CSWEIs, EPA 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.

24. During the CSWEIs, EPA and TDEC observed the following:

A. Records of inspections and the SWPPP were not available, as required by Sections 3.3.1, 5.2 and 3.5.3.1 of the Permit.

B. The site map submitted with the NOI did not clearly indicate the slope or direction of storm water flow, nor did it label receiving waters by name, as required by Sections 2.6.2 and 3.5.1 of the Permit.

C. The SWPPP did not include specific BMP controls for each individual lot, nor did it specify a velocity dissipation device at the outfall area, as required by Sections 3.5.2 and 3.5.4 of the Permit.

D. Several erosion and sediment controls were not implemented or maintained, as required by Sections 3.5.3.1, 3.5.3.2 and 6.14 of the Permit. Inactive disturbed land was not stabilized near lots 158 and 145, and appeared to have been inactive for more than 15 days; silt fencing was not installed at lot 158, and silt fencing was blown out at lot 146; inlet storm drain protection was not installed at any of the storm drains; the concrete wash out area was not installed

near lot 126; a sedimentation pond was not installed near lot 145; and although the detention pond in Phase II is not part of the Phase III project, it was being used as sediment control for runoff from Phase III, which is inconsistent with the SWPPP.

E. All reasonable steps were not taken to minimize or prevent storm water discharges that cause an objectionable color contrast, or have a reasonable likelihood to affect the environment, in the unnamed tributary to Wolflever Creek, as required in Sections 4.3.2 and 6.4 of the Permit.

25. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit and also for discharges not authorized by the Permit.

III. Stipulations and Findings

26. 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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

33. 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 **Five Thousand Dollars (\$5,000.00)** is an appropriate civil penalty to settle this action.

34. 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.

35. 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.

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

37. 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

38. 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.

39. 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.

40. 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.

41. 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.

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

43. 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.

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

45. 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:

James Goodwin
Capstone Developers, LLC
9231 Hidden Mountain Drive
Chattanooga, Tennessee 37421.

46. 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.


47. 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 State of Alabama was provided prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

48. 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:

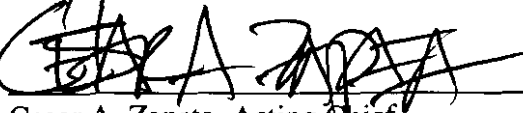
For RESPONDENT CAPSTONE DEVELOPMENT, LLC:



NAME: JAMES GOODWIN
TITLE: CHIEF MANAGER

Date: 5/24/10

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Cesar A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Date: 6/8/10

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	CONSENT AGREEMENT AND
)	FINAL ORDER
CAPSTONE DEVELOPERS, LLC)	
WELLESLEY SUBDIVISION PHASE III)	DOCKET NO. CWA-04-2010-4514(b)
COLLEGEDALE, TENNESSEE)	
)	
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: July 19, 2010

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

No. CWA-04-2010-4514(b), filed with the Regional Hearing Clerk on JUL 20 2010,

was served on JUL 20 2010, in the manner specified to each of the persons listed below.

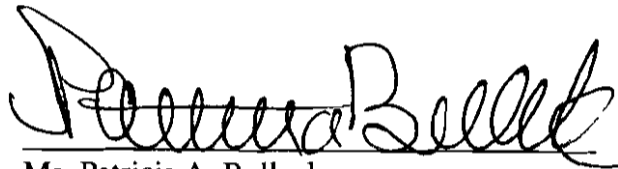
By hand-delivery:

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:

James Goodwin
Capstone Developers, LLC
9231 Hidden Mountain Drive
Chattanooga, Tennessee 37421.

Paul Davis
Director, Division of Water Pollution Control
Tennessee Department of Environment and Conservation
401 Church Street
L & C Annex, 6th Floor
Nashville, Tennessee 37243-1534



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
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 6/10/10
(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: Capstone Developers, LLC, Wellesley SD Phase II, Colliedale, TN
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 5,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4514(b)

The Site Specific Superfund Account Number: _____

Water Protection Division

The Designated Regional/Headquarters Program Office: _____

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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION
PROGRAM: _____

Case Docket Control Number: CWA-04-2010-4514(B)

Total Amount Due: \$ 5,000

Full payment due 30 days after issuance date of Signed CAIFs

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____