

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

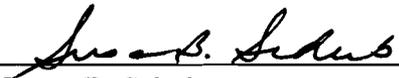
IN THE MATTER OF:)	CONSENT AGREEMENT AND
)	FINAL ORDER
CITY OF DURHAM, NORTH CAROLINA)	
)	
Respondent.)	Docket No.: CWA-04-2007-4502(b)
_____)	

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*, 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: 3/1/07


 Susan B. Schub
 Regional Judicial Officer

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Docket No.: CWA-04-2007-4502(b)

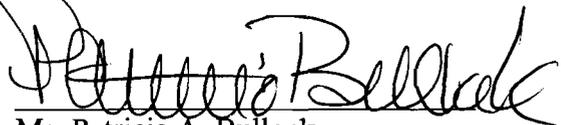
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of City of Durham, **Docket No. CWA-04-2007-4502(b)** (filed with the Regional Hearing Clerk on march 1, 2007) was served on march 1, 2007, in the matter specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: Karen Sindelar, Esq.
Assistant City Attorney
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

Alan W. Klimek, Director
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
P.O. Box 29535
Raleigh, NC 27626-0535



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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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IN THE MATTER OF:)
)
CITY OF DURHAM, NORTH CAROLINA)
)
Respondent.)
_____)

Docket No.: CWA-04-2007-4502(b)

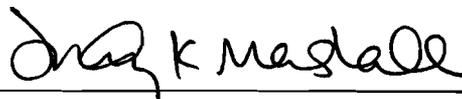
MOTION TO RE-ISSUE FINAL ORDER

Comes now the Complainant, the U.S. Environmental Protection Agency, Region 4, and requests that the attached Final Order and accompanying Consent Agreement be re-issued in this matter by the Honorable Susan B. Schub.

On January 9, 2007, RJO Schub issued an Order granting Complainant's request that the Final Order issued on December 12, 2006, be withdrawn until such time that Complainant fully complies with 40 C.F.R. Part 22. Complainant has now complied with 40 C.F.R. § 22.45(c)(4), by providing copies, and allowing commenters 30 days to petition to set aside, the Consent Agreement and proposed Final Order. No petitions were received.

Complainant is authorized to state that the Respondent, City of Durham, does not object to this motion.

Respectfully submitted this 27th day of February, 2007:



Judy K. Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **MOTION TO RE-
ISSUE FINAL ORDER, CONSENT AGREEMENT, AND FINAL ORDER** in the matter of

City of Durham, **Docket No. CWA-04-2007-4502(b)** (filed with the Regional Hearing Clerk on

February 28, 2007) was served on February 28, 2007 in the manner specified to each of
the persons listed below.

By inter-office mail:

Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

By certified mail,
return receipt requested:

Karen Sindelar, Esq.
Assistant City Attorney
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

Alan W. Klimek, Director
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
P. O. Box 29535
Raleigh, North Carolina 27626-0535



Sharon Thompson
Administrative Assistant
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9511

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
CITY OF DURHAM, NORTH CAROLINA)
)
Respondent.) Docket No.: CWA-04-2007-4502(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, the City of Durham ("Respondent"), a municipality existing under the laws of the State of North Carolina and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At times relevant to this action, Respondent owned and/or operated a Municipal Separate Storm Sewer System ("MS4") which discharges or has the potential to discharge storm water into a navigable water of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

5. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as 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.

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6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a 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. NCDENR issued Respondent NPDES Permit No. NCS000249 ("Permit") for its MS4 in accordance with the provisions of North Carolina's General Statute 143.215.1 and the Memorandum of Agreement between North Carolina and EPA. The Permit was issued with an effective date of December 30, 1994, and an expiration date of June 30, 1999. The Permit has been administratively extended until a renewal Permit is issued by NCDENR.

8. Part I.B.2 of the Permit requires the Permittee to pursue appropriate legal authorities and develop necessary local ordinances to administer all components of the Stormwater Program ("Program").

9. Part I.B.4.b of the Permit requires the Permittee to implement programs to address the contribution of pollutants to the storm sewer system from commercial and residential areas, including planning, monitoring, education, and operation and maintenance activities.

10. Part I.B.4.c of the Permit requires the Permittee to implement programs to detect and remove sources of illicit connections to the municipal storm sewer system and to remove sources of non-storm water discharge.

11. Part I.B.4.d of the Permit requires the Permittee to implement an inspection and monitoring program for storm water structures, industrial activities and other areas of the storm water system.

12. Part I.B.4.e of the Permit requires the Permittee to implement practices to reduce pollutants from construction sites through site planning, education, training and inspection, and enforcement mechanisms.

13. From June 28-30, 2005, representatives of Complainant in conjunction with NCDENR performed an Audit to evaluate the treatment and disposal of storm water at Respondent's MS4 in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the NCDENR Permit.

14. Complainant has determined that Respondent discharged storm water associated with industrial activity from its MS4 within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

15. As a result of the Audit, Complainant alleges:

A. Respondent has not pursued all legal authorities to administer all components of the Storm Water program, including enforcement procedures to address pollutants and illicit connections from commercial and residential areas.

B. Respondent had not begun a regular maintenance inspection program for its storm water structures, and had conducted no training since 1998. In addition, non-industrial inspectors were performing industrial inspections, all storm water controls and areas of concern were not inspected, paperwork was not reviewed during inspections, and the industrial inspection checklist did not focus on storm water concerns or activities.

C. Respondent's construction site programs were not fully implemented in that erosion and soil control inspections did not document all violations, and the Plan Submittal Checklists were not completely filled out for all sites.

D. Respondent failed to obtain storm water permit coverage for its North Durham Waste Water Treatment Plant, Fleet Maintenance Facility, Solid Waste Vehicle Wash Facility and Public Works Operation Center.

16. Therefore, Complainant alleges that Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Parts I.B.2, I.B.4.b, I.B.4.c, I.B.4.d, and I.B.4.e of the Permit, and for discharges not authorized under the CWA.

III. Stipulations and Findings

17. 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.

18. 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.

19. As against EPA, Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

20. 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.

21. 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.

22. Complainant 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 Complainant.

23. 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. The parties also agree that this CA/FO and any stipulations herein are for the benefit of the named parties to this action, and not for the benefit of or to be used by any other persons or entities.

IV. Payment

24. 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, Complainant has determined that Five Thousand Dollars (\$5,000.00) is an appropriate civil penalty to settle this action.

25. 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 tendered to:

U.S. Environmental Protection Agency
Cincinnati Operations Accounting
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099.

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

27. The penalty amount specified above shall represent civil penalties assessed by Complainant and shall not be deductible for purposes of federal taxes.

28. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if Complainant 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, Complainant 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. Complainant 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.

29. 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

30. 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 Complainant.

31. 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.

32. 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.

33. 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.

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

35. 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.

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

37. 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, Esq.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

For Respondent:

Karen Sindelar, Esq.
Assistant City Attorney
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701.

38. 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.

39. 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 North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

40. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

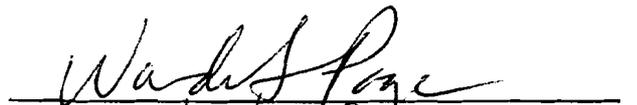
AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

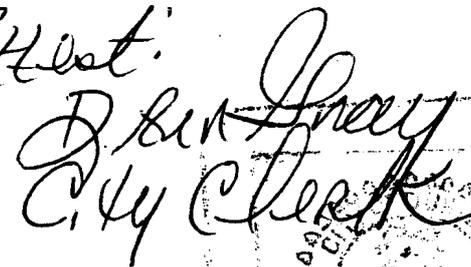

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division
U.S. EPA Region 4

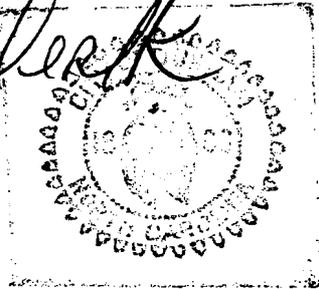
Date: 11/6/06

For RESPONDENT, CITY OF DURHAM:


NAME: Wade S. Page
TITLE: Deputy City Manager

Date: 10/13/06

Attest:

City Clerk



This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

 10/13/06