



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 12 2013

CERTIFIED MAIL 7012 1010 0001 8097 1723
RETURN RECEIPT REQUESTED

Mr. W. Christopher Stephens
5022 Wrightsville Avenue
Wilmington, North Carolina 28403

Re: Consent Agreement and Final Order No.: CWA 04-2013-5510(b)
Southwood Developers, Inc. and CKC, LLC
Leland, Brunswick County, North Carolina

Dear Mr. Stephens:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section V.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Mr. Chris Parker at (404) 562-9838, or your attorney may contact Ms. Suzanne Armor, Attorney Advisor, at (404) 562-9701.

Sincerely,

A handwritten signature in blue ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Ms. Sarah Hair
U.S. Army Corps of Engineers, Wilmington Regulatory Office

Mr. Jim Gregson
North Carolina Department Environment and Natural Resources, Wilmington

Mr. John Hennessey
North Carolina Department Environment and Natural Resources, Raleigh

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

**Southwood Developers, Inc. and
CKC, LLC,
Leland, North Carolina,**

RESPONDENTS.

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
)
) **Docket No.: CWA-04-2013-5510(b)**

RECEIVED
EPA REGION IV
2013 SEP 12 PM 3: 10
HEARING CLERK

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under 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*, 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)(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 for EPA Region 4, who in turn has redelegated 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. Statutory and Regulatory Background

3. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), states “[w]henever, 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)].”

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. § 1314], 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 (“Corps”), 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 approximately 3.85 acres of forested wetlands adjacent to and abutting an unnamed perennial tributary of Rowel Branch, on property located along the north side of U.S. Highway 74/76, west of the town of Leland, Brunswick County, North Carolina, near latitude 34°16’06” north and longitude 78°04’29” west (“the Site”). (See Exhibits A and B).

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

12. Southwood Developers, Inc. and CKC, LLC (“Respondents”) are companies duly organized under the laws of the State of North Carolina and, as such, are persons within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondents at all times relevant to this AOC, were the owners and/or operators of the parcel of land located along the north side of U.S. Highway 74/76, west of Leland, Brunswick County, North Carolina, near latitude 34°16’06” north and longitude 78°04’29” west, which contained the Discharge Area.

14. 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 in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

15. Commencing on or about November 13, 2008 to the present, Respondents, and/or those acting on behalf of the Respondents, discharged dredged and/or fill material into wetlands on the Site using excavators, bull dozers and other earth moving machinery, during unauthorized activities associated with mechanical land clearing and excavation with side cast into waters of

the United States associated with the construction of a residential neighborhood known as Windsor Park.

16. Respondents' unauthorized activities impacted approximately 3.85 acres of wetlands that are adjacent to and abutting an unnamed perennial tributary of Rowel Branch. Rowel Branch is a perennial stream that flows to Mill Creek. Mill Creek is a perennial stream that flows to Sturgeon Creek. Sturgeon Creek is tributary to the Brunswick River and both are tidally influenced navigable waters of the United States.

17. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA Section 502(6), 33 U.S.C. § 1362(6).

18. The earth moving machinery employed by the Respondents to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA Section 502(14), 33 U.S.C. § 1362(14).

19. A "discharge of a pollutant" as defined at Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

20. Respondents' placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA Section 502(12), 33 U.S.C. § 1362(12).

21. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

22. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. At no time during the discharge of dredged and/or fill material into the Discharge Area from November 13, 2008 to the present, did the Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by Respondents.

24. Each discharge by the Respondents 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).

25. Each day the material discharged by the Respondents 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.

26. Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

27. On November 13, 2008, the Corps discovered that the Respondents, and/or those acting on behalf of the Respondents, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery, during unauthorized activities associated with the construction of a residential neighborhood, Windsor Park.

28. On December 12, 2008, the Corps issued a Cease and Desist Order to the Respondents prohibiting Respondents from further placement of dredged and/or fill material in waters of the United States.

29. On February 10, 2011, the Corps referred the enforcement case against the Respondents to the EPA in accordance with the 1989 Memorandum of Agreement between the Corps and the EPA concerning federal enforcement of the CWA.

30. On August 26, 2011, the EPA issued an Administrative Compliance Order, Docket No. CWA-04-2011-5778, and 308 Information Request, Docket No. 308-011-012, to the Respondents, ordering the Respondents to submit a restoration plan and to answer specific questions about the unauthorized activity.

31. On August 29, 2011, Respondents submitted a response to the 308 Information Request.

32. On September 28, 2011, Southern Environmental Group, Inc., on behalf of the Respondents, submitted a restoration plan entitled Windsor Park Wetland Restoration Plan (“the Plan”) which establishes methods and success criteria for restoring the wetlands impacted to the EPA for review. The EPA provided comments and, on December 4, 2012, Respondents submitted a final Plan that addressed the EPA’s comments.

33. On January 25, 2013, the EPA issued Respondents an Administrative Compliance Order on Consent, Docket No. CWA-04-2013-5755, effective January 30, 2013 (hereinafter, “AOC”), directing Respondents to implement the Plan and complete restoration of the Discharge Area no later than September 1, 2013. To-date, Respondents have been fully compliant with the AOC.

IV. Stipulations and Findings

34. Complainant and Respondents have conferred for the purpose of settlement under 40 C.F.R. § 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. § 22.13(b), this Administrative Consent Agreement and Final Penalty Order (“CA/FO”) will simultaneously commence and conclude this matter.

35. For the purposes of this CA/FO, Respondents admit the jurisdictional allegations set out above and the factual allegations set out above.

36. Respondents hereby waive their right to contest the allegations set out above and their right to appeal the Final Order accompanying this Consent Agreement.

37. Respondents consent to the assessment of and agree to pay the administrative penalty as set forth in this CA/FO, and consent to the other conditions set forth in this CA/FO.

38. By signing this CA/FO, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize 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.

39. The 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 Respondents was materially false or inaccurate at the time such information or certification was provided to the EPA.

40. Complainant and Respondents 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

41. 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, the EPA has determined that eleven thousand dollars (\$11,000) is an appropriate civil penalty to settle this action.

42. Respondents 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 names of Respondents 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
P.O. Box 979077
St. Louis, Missouri 63197-9000

For other payment options (Ex: Wire Transfers, Overnight Mail, ACH, and On Line), please refer to Attachment A.

43. At the time of payment, Respondents 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
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
Clean Water Enforcement Branch
Wetlands Enforcement Section
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

44. 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.

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

46. This CA/FO shall not relieve Respondents of their obligations 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.

47. 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 Respondents' violation(s) of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondents' violation(s) of any federal or state statute, regulation or permit.

48. Except as otherwise set forth in this document, this CA/FO constitutes a settlement by Complainant and Respondents 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 Respondents, 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 Respondents 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.

49. 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.

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

51. The obligations of Respondents under this CA/FO are joint and several.

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

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

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

For Complainant:

Suzanne K. Armor
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9701

For Respondents:

Mr. W. Christopher Stephens
5022 Wrightsville Avenue
Wilmington, North Carolina 28403

55. 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.

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

57. 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.

58. Effective upon signature of this CA/FO by Respondents, Respondents agree that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondents the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondents will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondents that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VII. Release by Respondent

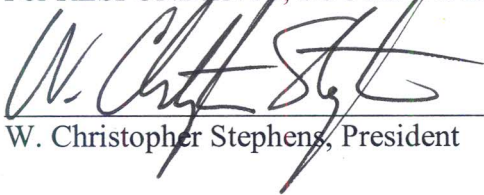
59. Respondents hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CA/FO, including but not limited to, any claim that any of the matters or actions described in this CA/FO have resulted in a taking of Respondents' property without compensation.

VIII. Effective Date

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

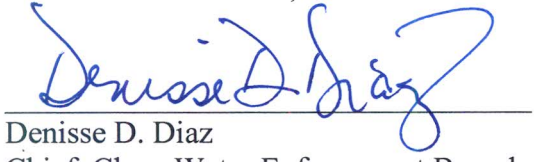
AGREED AND CONSENTED TO:

For RESPONDENTS, SOUTHWOOD DEVELOPERS, INC. and CKC, LLC:


W. Christopher Stephens, President

Date: 7/24/2013

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


Denisse D. Diaz
Chief, Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 9/12/13

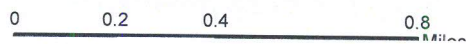


EXHIBIT A
Windsor Park
Brunswick County, NC





EXHIBIT B
Windsor Park
Brunswick County, NC



ATTACHMENT A

COLLECTION INFORMATION

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV (Enter sfo 1.1 in the search field Open form and complete required fields).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Southwood Developers, Inc. and
CKC, LLC,
Leland, North Carolina,

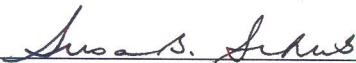
RESPONDENTS.

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
) **Docket No.: CWA-04-2013-5510(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), Respondents are 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. 12, 2013

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-04-2013-5510(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Christopher Parker, Enforcement Officer
Clean Water Enforcement Branch
Wetlands Enforcement Section
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

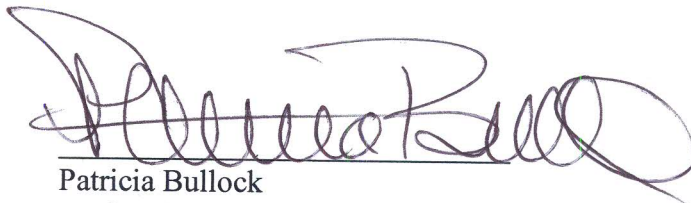
By hand-delivery:

Suzanne K. Armor, Associate Regional Counsel
Office of Water Legal Support
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By Certified mail,
return receipt requested:

Mr. W. Christopher Stephens
5022 Wrightsville Avenue
Wilmington, North Carolina 28403

Dated: 9-12-13



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

=====

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 8/27/13
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
SF Judicial Order/Consent Decree. FMS COLLECTS.
This is an original debt.
Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
Other Receivables
This is a modification.

PAYEE: Southwood Developers, Inc. - Windsor Park
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 11,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-5510 (b)

The Site-Specific Superfund (SF) Account Number:

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is:
If you have any questions call: in the Financial Management Section,
Telephone Number:

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/RH 1647, P.O. BOX 7611, Benjamin Franklin Station, Washington, DC 20044
2. Originating Office (ORC)
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 sent to:

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

Case Docket Control Number: CWA-04-2013-5510(b)

Total Amount Due: \$ 11,000

Full payment due within 30 days of the effective date of the CAFO.

 Installment payments to be paid:

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