



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

DEC 13 2006

CERTIFIED MAIL 7005 1160 0004 1742 8994
RETURN RECEIPT REQUESTED

Ms. Karen A. Sindelar
Senior Assistant City Attorney
City of Durham
Office of the City Attorney
101 City Hall Plaza
Durham, NC 27701

SUBJ: Consent Agreement and Final Order
Docket No. CWA-04-2007-4502(b)
NPDES Permit No. NCS000249
City of Durham Municipal Separate Storm Water Sewer System

Dear Ms. Sindelar:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order which 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 concerns, please contact Ms. Susan Pope at (404) 562-9770.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

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

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.

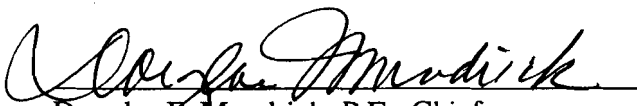
39. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

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.

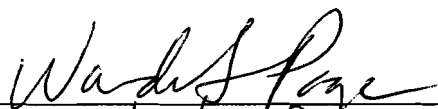
AGREED AND CONSENTED TO:

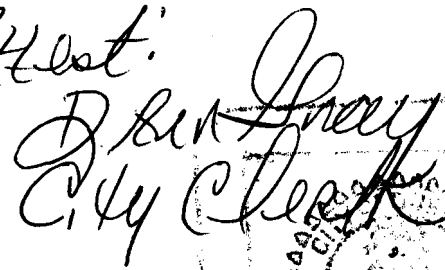
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

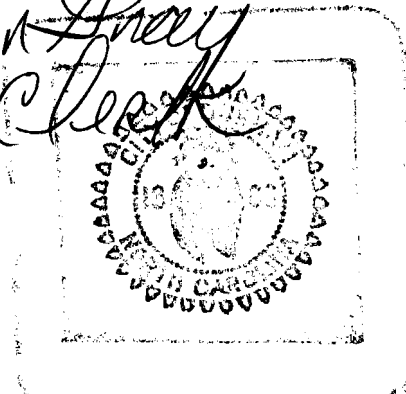

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division
U.S. EPA Region 4

Date: 11/6/06

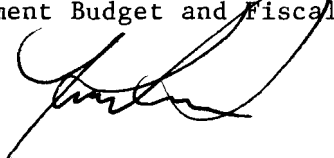
For RESPONDENT, CITY OF DURHAM:


NAME: Wanda S. Page
TITLE: Deputy City Manager

Attest:

City Clerk
Date: 10/13/06



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

 10/13/06

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

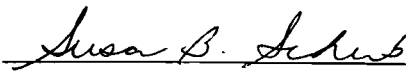
IN THE MATTER OF:)
)
CITY OF DURHAM, NORTH CAROLINA)
)
Respondent.) Docket No.: CWA-04-2007-4502(b)
_____)

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: December 12, 2006



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 City of Durham, **Docket No. CWA-04-2007-4502(b)** (filed with the Regional Hearing Clerk on ~~DEC 13 2006~~ DEC 14 2006) was served on ~~DEC 14 2006~~, 2006, in the manner 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

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 11/3/06
(Name) (Date)

in the WMD/WPEB/GES 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: City of Durham, NC
(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-04-2007-4502(b)

The Site Specific Superfund Account Number: _____

WMD

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) |

1114 Scott King Road
Durham, NC 27713-9744
December 6, 1006

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

Sir:

Regarding Durham, North Carolina and their proffered deal to let them "off the hook" for four violations of an anti-pollution permit for a mere \$5,000 fine, my advice is a resounding "NO". Having lived here for 45 years, I can say that unless you levy the full fines (plus late fees if there are any), the mistakes will be repeated over and over, and the excuses will be the same.

Further, the poor quality of their infrastructure is of their own making. There is little maintenance and no allowance for the fact that as development continues, the stormwater problems get worse. The core services have been allowed to deteriorate for several years as new sevicees constantly move outward into the newly developed areas.

Mr. Voorhees uses the same argument for poor maintenance of the sewage system, the drinking water supply, the solid waste management - "It is not our fault". So, fine them.

Elizabeth Pullman



RECEIVED
EPA REGION IV
2006 DEC 12 AM 7:12
HEARING CLERK

PAT BULLOCK
REGIONAL HEARING CLERK

FAX # 404-562-9487

Carol W. Young
5808 Williamsburg Way
Durham, NC 27713
December 6, 2006

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth St.
Atlanta, GA 30303-8960

RE: Durham, NC proposed settlement with EPA for pollution violations

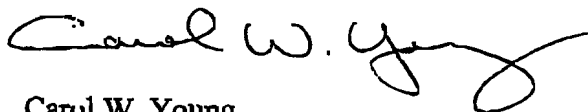
I have been a resident of Durham, North Carolina for 25 years and have witnessed an increase in the degradation of stormwater quality with excessive siltation as well as an increase in stormwater quantity, both directly proportional to the overwhelming amount of development.

The contributing factors can be summed up as follows:

1. Rules are made largely by and for the development community. Excessive numbers of streams are allowed to be piped. Developers are responsible for handling only the first inch of rain which is totally inadequate. Impervious surface calculations are unrealistic. A site can be rendered, for all intents and purposes, completely impervious yet can be developed under the low density option designation which requires less stringent storm water controls.
2. Durham has a history of lax enforcement. Violators are accorded too much time to come into compliance and fines, when they are levied, are not high enough to act as a deterrent.
3. Durham County has an excellent Sedimentation and Erosion Control Manager; however, he is hampered by lack of staffing as well as an unwieldy number of construction sites to oversee since Durham is allowing development to occur at a pace that they cannot adequately oversee.
4. The City of Durham has a poor record regarding their handling of storm water, waste water and drinking water. People are not held accountable when major problems occur and offering excuses is standard procedure.

Durham should be held accountable for its misdeeds. A slap on the wrist in the form of a reduced fine will not bring about the changes necessary to improve stormwater quality. To not require changes to Durham's stormwater program is to ensure that the problems cited will continue. Southern Durham County's watershed has been declared impaired by EPA and will continue to be impaired if the status quo remains acceptable.

Sincerely,



Carol W. Young

HEARING CLERK
2006 DEC -7 PM 4:19

RECEIVED
EPA REGION IV



"Bender, Jack "
<JCB@GDM.com>
11/20/2006 09:53 AM

To Patricia Bullock/R4/USEPA/US@EPA, Mary
Mattox/R4/USEPA/US@EPA, Mary
Halback/R4/USEPA/US@EPA

cc

bcc

Subject Public Comment on CWA-04-2007-4502(b)

I would like to obtain an electronic copy of the Consent Agreement and Final Order with the City of Durham related to its storm water program. Could the CAFO be emailed to me? Thanks.

Jack C. Bender

Member

Greenebaum Doll & McDonald PLLC

300 West Vine Street, Suite 1100

Lexington, KY 40507-1665

Direct: (859) 288-4607

Main: (859) 231-8500

Fax: (859) 367-3806

E-Mail: jcb@gdm.com

The following warning is required by the IRS whenever tax advice is given. If this email contains no direct or indirect tax advice, the warning is not applicable.

As a result of perceived abuses, the Treasury has recently promulgated Regulations for practice before the IRS. These Circular 230 regulations require all attorneys and accountants to provide extensive disclosure when providing certain written tax communications to clients. In order to comply with our obligations under these Regulations, we would like to inform you that since this document does not contain all of such disclosure, you may not rely on any tax advice contained in this document to avoid tax penalties, nor may any portion of this document be referred to in any marketing or promotional materials.

This message has been sent from a law firm and may contain information which is confidential or privileged. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Please advise immediately if you or your employer do not want us to use Internet e-mail for future messages of this kind. Thank you.



"Cox, John "
<John.Cox@durhamnc.gov>
12/20/2006 09:59 AM

To Patricia Bullock/R4/USEPA/US@EPA, Mary
Mattox/R4/USEPA/US@EPA, Mary
Halback/R4/USEPA/US@EPA

cc

bcc

Subject Public Comment on CWA-04-2007-4502(b)

Please forward the three comments received together with any response by EPA Region IV on the Consent Agreement and Final Order for the City of Durham; **#CWA-04-2007-4502(b)**

John Cox

John H. Cox. P.E.

Engineer III

Storm Water Services

City of Durham

101 City Hall Plaza

Durham, NC 27701

E-mail: John.Cox@durhamnc.gov

Web site: www.ci.durham.nc.us/departments/works/divisions/stormwater
