



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 20 2007

CERTIFIED MAIL 7005 3110 0003 6266 0448

RETURN RECEIPT REQUESTED

Mr. James T. Lobb, Esq.
Weber & Rose
2400 Aegon Center
400 West Market Street
Louisville, KY 40202

SUBJ: Consent Agreement and Final Order
Docket No. CWA-04-2007-4531(b)
Lot 1 Forest Green
Louisville, Kentucky

Dear Mr. Lobb:

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

Should you have any questions or concerns regarding this matter, please contact Araceli Bonilla at (404) 562-9790.

Sincerely,

A handwritten signature in black ink that reads "Jim Stewart for".

James D. Giattina, Director
Water Management Division

Enclosure

cc: Kentucky Department for Environmental
Protection
Kentucky Department for Environmental
Protection – Louisville District

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
FAULKNER REAL ESTATE) **CONSENT AGREEMENT AND**
CORPORATION AND FOREST) **FINAL ORDER**
GREEN – LAND, LLC)
LOT 1 FOREST GREEN)
LOUISVILLE, KENTUCKY)
)
RESPONDENTS.) **DOCKET NO. CWA-04-2007-4531**

RECEIVED
EPA REGION IV
2007 AUG 20 AM 8:50
HEARING CLERK

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), 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) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 (“Complainant”).

II. Allegations

3. At all times relevant to this action, Faulkner Real Estate Corporation was a corporation duly organized and existing under the laws of the Commonwealth of Kentucky, and Forest Green – Land, LLC was a limited liability company duly organized and existing under the laws of the Commonwealth of Kentucky. Therefore, Faulkner Real Estate Corporation and Forest Green – Land, LLC (“Respondents”) are each 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, Respondents owned and/or operated a construction site known as Lot 1 Forest Green (“Facility”) located at 1200 Forest Bridge Road, Louisville, Kentucky.

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.

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

7. The KDEP issued a *General KPDES Permit for Storm Water Point Source Discharges, Construction Activities* ("Permit"), Permit No. KYR10, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 16-050 and pursuant to 401 Kentucky Administrative Regulations ("KAR") 5:055, Sections 1 and 5, and the CWA. The Permit was effective October 1, 2002, and expires September 30, 2007.

8. The KDEP is responsible for the issuance, compliance and enforcement of Kentucky Revised Statutes Chapter 224 16-050 and 401 KAR 5:055, Sections 1 and 5, and the approval of coverage under the Permit upon submission and approval of a Notice of Intent ("NOI") requesting Permit coverage.

9. On October 25, 2006, representatives of EPA in conjunction with KDEP and the Louisville and Jefferson County Metropolitan Sewer District ("MSD") performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility in accordance with the CWA and the regulations promulgated thereunder at 40 C.F.R. § 122.26.

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

11. At the time of the CSWEI, Respondents had not submitted an NOI for the Facility and had not obtained coverage under the Permit for the discharge of storm water associated with industrial activity.

12. During the CSWEI, EPA made the following observations:

A. The Best Management Practices ("BMP") Plan site map for the Facility was made available by MSD staff. It was noted during the CSWEI that the Plan was not updated to current conditions, did not identify all operators, did not contain a construction schedule describing the intended sequence and

implementation date of BMPs, did not identify all major BMP controls, did not identify the receiving water or address post-construction storm water measures.

B. A detention/retention area was observed during the CSWEI but was not reflected in the BMP site map.

C. The Facility outfall had no outlet protection which caused water to pond at the outlet.

D. The construction entrance/exit needed maintenance as sediment was leaving the Facility and tracking onto Forest Bridge Road.

E. Concrete boulders and debris were piled high near the southern portion of the Facility causing a blowout in the perimeter silt fencing.

F. Perimeter silt fencing was observed full of sediment and/or not installed properly.

G. Soil stockpiles and areas around the detention/retention pond needed to be stabilized. An area above the Facility outfall appeared to have been recently stabilized with hay.

H. Sediment accumulation was observed in Beargrass Creek.

13. Therefore, Respondents have violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to obtain coverage under the KDEP Permit for storm water discharges from its Facility.

III. Stipulations and Findings

14. Complainant and Respondents 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.

15. For the purposes of this CA/FO, Respondents admit the jurisdictional allegations set out above and neither admit nor deny the factual allegations set out above.

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

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

18. 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.

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

20. 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.

IV. Payment

21. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Forty-Eight Thousand Dollars (\$48,000.00) is an appropriate civil penalty to settle this action.

22. 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 tendered to:

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

23. 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
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

and

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, GA 30303-8960.

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

25. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

26. Pursuant to 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.

V. General Provisions

27. This CA/FO shall not relieve Respondents of their 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.

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

29. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondents 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 Respondents, 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 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.

30. 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.

31. This CA/FO applies to and is binding upon Respondents and their officers, directors, employees, agents, successors and assigns.

32. 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.

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

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

For Complainant:

Ms. Tanya Floyd
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9813

For Respondent:

Mr. James T. Lobb, Esq.
Weber & Rose
2400 Aegon Center
400 West Market Street
Louisville, Kentucky 40202
(502) 589-2200

35. 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.

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

VI. Effective Date

37. 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:

 Jim Stewart
James D. Giattina, Director
Water Management Division
U.S. EPA, Region 4

Date: 7/12/07

For RESPONDENT, FAULKNER REAL ESTATE CORPORATION:

 Fred D. Faulkner
NAME: Fred D. Faulkner

Date: June 21, 2007

TITLE: President

For RESPONDENT, FOREST GREEN - LAND, LLC:

By: Faulkner Hinton Properties, Inc., ITS MANAGER

 Fred D. Faulkner
NAME: Fred D. Faulkner

Date: JUNE 21, 2007

TITLE: President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

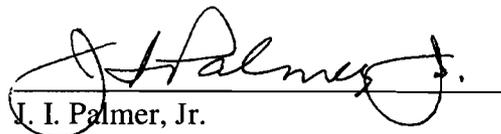
IN THE MATTER OF:)
)
FAULKNER REAL ESTATE) CONSENT AGREEMENT AND
CORPORATION AND FOREST) FINAL ORDER
GREEN - LAND, LLC)
LOT 1 FOREST GREEN)
LOUISVILLE, KENTUCKY)
)
RESPONDENTS.) DOCKET NO. CWA-04-2007-4531(b)
_____)

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. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1 AUG - 8 2007



J. I. Palmer, Jr.
Regional Administrator
U.S. EPA, Region 4

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Lot 1 Forest Green, Louisville, Kentucky**, Docket No. CWA-04-2007-4531(b) (filed with the Regional Hearing Clerk on **AUG 20 2007**, 2007) was served on **AUG 20 2007**, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Tanya Floyd
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

**By certified mail,
return receipt requested:** Mr. James T. Lobb, Esq.
Weber & Rose
2400 Aegon Center
400 West Market Street
Louisville, KY 40202

Ms. Susan Rose Green, Director
Division of Enforcement
Kentucky Department for Environmental Protection
14 Reilly Road
Frankfort, KY 40601



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 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 6/27/07
(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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Lot 1 Forest Green, Louisville, KY - Faulkner Real Estate Co
Forest Green-Land LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 48,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-4531(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
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|