



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

June 19, 2007

CERTIFIED MAIL 7004 1160 0000 8849 0703  
RETURN RECEIPT REQUESTED

Mr. Claude Fountain  
Heritage Partners, LLC  
2107 5<sup>th</sup> Avenue, North  
Birmingham, AL 35203

SUBJ: Administrative Complaint and Notice of Proposed Penalty Assessment  
Docket No. CWA-04-2007-4528  
Heritage Park Phase 2  
McCalla, Alabama

RECEIVED  
EPA REGION IV  
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Dear Mr. Fountain:

Enclosed is a document entitled Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency (EPA) is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to Heritage Partners, LLC, for violations at its development known as Heritage Park Phase 2 (Development). The Complaint alleges that Heritage Partners, LLC failed to comply with the requirements of the Alabama Department of Environmental Management *National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities*, Permit No. ALR100000 ("the Permit") effective March 1, 2003, and revised September 19, 2006, in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, for portions of the Development. In addition, Heritage Partners, LLC, failed to obtain coverage under the Permit for an additional acreage cleared at the Development. The Complaint requests that a civil penalty of up to \$32,500 be assessed for these violations.

A copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999), which apply to this case, is enclosed for your reference.

Pursuant to Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), and 40 C.F.R. § 22.15(c), you may request a hearing regarding any material fact alleged in the Complaint and on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out at 40 C.F.R. Part 22.

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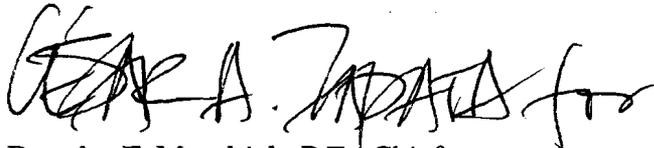
In order to be entitled to a hearing under the CWA, you must file an Answer to the Complaint within thirty (30) days after receipt of this Complaint as outlined in Section VI of the Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations of the Complaint with regard to which you have any knowledge. If you fail to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, you may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing on such factual allegations. In that case, a civil penalty may be assessed against you and will become due and payable without further proceedings after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

In addition, failure to pay the assessed penalty may subject you to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

You may request an informal meeting with EPA to discuss settlement of this action by contacting Ms. Judy Marshall, Associate Regional Counsel, at (404) 562-9533. You have the right to be represented by an attorney at any stage of the proceedings, including in any informal discussions with EPA. Please note that a request for an informal settlement conference does not extend the thirty (30) day period in which to submit an Answer to this Complaint.

If you have any questions, please contact Ms. Marshall (404) 562-9533.

Sincerely,



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

Enclosures

cc: Alabama Department of Environmental  
Management  
Alabama Department of Environmental  
Management, Birmingham Branch Office



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

June 19, 2007

CERTIFIED MAIL 7004 1160 0000 8849 0697  
RETURN RECEIPT REQUESTED

Mr. Steve Jenkins, Chief  
Field Operations Division  
Alabama Department of Environmental Management  
P. O. Box 301463  
Montgomery, AL 36130-1463

SUBJ: Administrative Complaint and Notice of Proposed Penalty Assessment  
Docket No. CWA-04-2007-4528  
Heritage Partners, LLC  
Heritage Park Phase 2  
McCalla, Alabama

Dear Mr. Jenkins:

Enclosed is a copy of the Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency (EPA) is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to Heritage Partners, LLC for violations at its development known as Heritage Park Phase 2. In the Complaint, EPA proposes to assess Class I administrative penalties of up to \$32,500 for violations of the CWA.

Because the violations have occurred in the State of Alabama, EPA is offering you an opportunity to confer with us regarding the proposed assessment. If you wish to request a conference, or if you have any comments or questions regarding the matter, you may call me at (404) 562-9328, or your staff may call Mr. Namon Mathews at (404) 562-9777. A request for a conference may be in person or by telephone and may cover any matters relevant to the proposed assessment.

Sincerely,

A handwritten signature in black ink that reads "Douglas F. Mundrick" followed by a flourish.

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
HERITAGE PARTNERS, LLC )  
HERITAGE PARK PHASE 2 )  
MCCALLA, ALABAMA )  
 )  
 )  
RESPONDENT. )  
 )

ADMINISTRATIVE COMPLAINT  
AND NOTICE OF PROPOSED  
PENALTY ASSESSMENT  
DOCKET NO. CWA-04-2007-4528

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**ADMINISTRATIVE COMPLAINT  
AND NOTICE OF PROPOSED PENALTY ASSESSMENT**

**I. Nature of the Action**

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").

3. Complainant hereby requests the assessment of a civil penalty against Heritage Partners, LLC ("Respondent"), and provides notice of Respondent's opportunity to request a hearing on the proposed penalty assessment for failure to comply with the requirements for storm water discharges, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

**II. Statutory and Regulatory Background**

4. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. Pursuant to Section 402(b) of the CWA, EPA has granted the State of Alabama Department of Environmental Management ("ADEM") approval to administer the NPDES program.

6. ADEM issued Administrative Code Chapter 335-6-12, *National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities* ("Permit Regulations"), in accordance with the Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 and 22-22A-16 *et seq.*, as amended, effective March 1, 2003, and revised September 19, 2006.

7. Regulated facilities must submit a Notice of Registration ("NOR") requesting coverage under the Permit Regulations, and must submit an NOR each year thereafter to maintain coverage until all disturbed areas have been reclaimed and/or effective storm water quality remediation has been achieved. The Permit Regulations also require that a Construction Best Management Practices Plan ("CBMPP"), designed to minimize pollutant discharges in storm water runoff to the maximum extent practicable during land disturbance activities, be submitted, fully implemented and effectively maintained. The ADEM Water Division is responsible for the approval of coverage under the Permit Regulations, upon submission of the NOR and CBMPP.

### III. Allegations

8. Respondent is a corporation duly organized and existing under the laws of the State of Alabama and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. At all times relevant to this action, Respondent owned and/or operated a construction site known as Heritage Park Phase 2 ("Development") located at Eastern Valley Road South, McCalla, Alabama, and is the "Operator" of the Development within the meaning of Rule 335-6-12-.02 of the Permit Regulations.

10. On March 31, 2005, Respondent submitted to ADEM an NOR and a CBMPP, requesting permit coverage for its Development to ADEM. A Notice of Coverage was sent to Respondent with an effective date of March 31, 2005, and an expiration date of March 30, 2006.

11. Rule 335-6-12-.05(2) of the Permit Regulations requires the Operator to maintain adequate records to document compliance with the Permit Regulations, and to fully implement and regularly maintain effective Best Management Practices ("BMPs") to the maximum extent practicable and in accordance with the CBMPP.

12. Rule 335-6-12-.05(3) of the Permit Regulations requires the Operator to regularly evaluate and inspect the Development to ensure compliance with the provisions of the Permit Regulations, to implement and maintain a comprehensive CBMPP, and to submit reports and certifications as required by the Permit Regulations.

13. Rule 335-6-12-.06(4) of the Permit Regulations requires the Operator to take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge.

14. Rule 335-6-12-.10(4)(b) of the Permit Regulations requires the Operator to submit a revised NOR prior to any proposed major modification including, but not limited to:

A. An increase in the size of the project or number of unreclaimed or disturbed acres that is sufficient to place the construction site in a higher fee category (Rule 335-6-12-.10(4)(b)1);

B. A significant change in the CBMPP or BMPs (Rule 335-6-12-.10(4)(b)3); or

C. Any other significant change at the construction site that may have an impact on water quality (Rule 335-6-12-.10(4)(b)4).

15. Rule 335-6-12-.15(2) of the Permit Regulations requires the Operator to keep all records at the construction site, or at an alternative site previously identified to ADEM and immediately available for inspection.

16. Rule 335-6-12-.21(2)(a) of the Permit Regulations requires the Operator to implement a comprehensive CBMPP appropriate for site specific conditions that has been prepared and certified by a Qualified Credentialed Professional ("QCP"). The CBMPP shall describe the structural and/or non-structural practices and management strategies to be implemented and maintained at the site.

17. Rule 335-6-12-.21(2)(b) of the Permit Regulations requires the Operator to include a description of appropriate, effective water quality BMPs to be implemented at the site, including but not limited to:

A. Rule 335-6-12-.21(2)(b)3 - Proper cleanup/removal or effective stabilization of sediment deposited offsite;

B. Rule 335-6-12-.21(2)(b)5 - Measures to be implemented on all areas not undergoing active disturbance or active construction and progressive construction for longer than thirteen (13) days to prevent/minimize erosion and ensure timely temporary vegetative cover; and

C. Rule 335-6-12-.21(2)(b)10 - Estimates of the total area of the property and the total site area expected to be disturbed.

18. Rule 335-6-12-.21(3) of the Permit Regulations requires the Operator to implement additional effective structural and nonstructural BMPs, as necessary, to protect water quality, and update the CBMPP accordingly.

19. Rule 335-6-12-.21(4) of the Permit Regulations requires the Operator to ensure that BMPs are designed, implemented and regularly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected/predicted during construction disturbance, and during extended periods of adverse weather and seasonable conditions.

20. Rule 335-6-12-.21(5) of the Permit Regulations requires the Operator to ensure that:

A. Rule 335-6-12-.21(5)(a) - BMPs are fully implemented and regularly maintained; and

B. Rule 335-6-12-.21(5)(b) - BMPs are implemented to the maximum extent practicable to prevent off-site sedimentation and deposition of construction site wastes.

21. Rule 335-6-12-.26(2) of the Permit Regulations requires the Operator to document and ensure that effective BMPs are properly designed, implemented, and consistently maintained to prevent/minimize discharges of pollutants in storm water runoff.

22. Rule 335-6-12-.35(10)(a) of the Permit Regulations requires the Operator to take prompt steps to mitigate, and prevent or minimize, any adverse impact resulting from noncompliance with any requirements of the Permit Regulations; determine the nature and impact of the non-complying discharge; and remove, to the maximum extent practical, pollutants deposited in any waterbody or storm water conveyance structure.

23. On March 16, 2006, representatives of EPA, in conjunction with ADEM, performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondent's Development to evaluate the treatment and disposal of storm water at Respondent's Development in accordance with the CWA, the regulations promulgated thereunder at 40 Code of Federal Regulations ("C.F.R.") § 122.26, and the ADEM Permit Regulations.

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

25. During the CSWEI, EPA observed the following:

A. Respondent's permit coverage was for seventeen (17) acres; however, Respondent actually cleared thirty-five (35) acres. Respondent did not originally apply for permit coverage on the additional disturbed acres, nor had Respondent amended the NOR or the CMBPP to reflect the changed conditions, as required by Rules 335-6-12-.10(4)(b), 335-6-12-.21(2)(a), and 335-6-12-.21(2)(b)10 of the Permit Regulations.

B. There were no BMPs on the additional eighteen (18) disturbed acres, as required by Rule 335-6-12-.21(3) of the Permit Regulations.

C. Street curb inlet protection and the sediment basins were not installed, as described in the CBMPP and as required by Rules 335-6-12-.05(3), 335-6-12-.21(2)(a), 335-6-12-.21(4), 335-6-12-.21(5)(a), 335-6-12-.21(5)(b), 335-6-12-.26(2) and 335-6-12-.26(2) of the Permit Regulations.

D. Temporary or permanent stabilization was not initiated within thirteen (13) days where construction activity had ceased in May of 2005, as required by Rule 335-12-6-.21(2)(b)5 of the Permit Regulations.

E. Sediment discharge was observed in the unnamed tributary to Shades Creek near lot 88 next to Eastern Valley Road. Sediment discharge was neither prevented nor minimized, nor was the tributary remediated, as required by Rules 335-6-12-.06(4), 335-6-12-.21(2)(b)3, 335-6-12-.21(5)(b), 335-6-12-.21(6), 335-6-12-.26(2) and 335-6-12-.35(10)(a) of the Permit Regulations.

F. The CBMPP and inspection records were not on-site at the time of inspection, or at a readily available, previously identified location, as required by Rules 335-6-12-.05(2) and 335-6-12-.15(2) of the Permit Regulation.

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

#### **IV. Proposed Penalty Assessment**

27. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to assess a Class I civil penalty of up to \$11,000 per violation up to a maximum amount of \$32,500 for violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. *Civil Monetary Penalty Inflation Adjustment Rule*, 69 Fed. Reg. 7121 (February 13, 2004).

28. Based on the foregoing Allegations, and pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Complainant proposes that a penalty of up to \$32,500 may be assessed against Respondent.

29. This penalty, as assessed, has taken into account the statutory penalty factors identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations, and Respondent's ability to pay, **prior** compliance history, degree of culpability, accrued economic benefit or savings, **and such other** matters as justice may require. With respect to severity of the six (6) violations described in the foregoing allegations, EPA states that Respondent disturbed twice as many acres than it was permitted to, the additional disturbed acres had no BMPs to prevent or minimize sediment discharge, there were missing BMPs on the permitted disturbed acres, there was no temporary or permanent stabilization on the disturbed areas for at least ten (10) months, records were not available during the inspection, and there was a significant amount of sediment in the unnamed tributary to Shades Creek.

#### **V. Procedures Governing This Complaint**

30. The rules of procedure governing this civil administrative litigation are set forth in the *Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999).

31. 40 C.F.R. Part 22 prohibits any ex parte discussion of the merits of a case with, among others, the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer or Administrative Law Judge after the Complaint has been issued. 40 C.F.R. § 22.08.

## **VI. Answering This Complaint**

32. Where Respondent intends to contest any material fact upon which this Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 4, both an original and one copy of a written Answer to the Complaint. Such Answer must be filed within thirty (30) calendar days after service of the Complaint at the address below:

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

40 C.F.R. § 22.15(a). Respondent shall also serve one copy of its Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

33. A copy of the Answer and all other documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

34. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. The Answer shall also set forth the circumstances or arguments that are alleged to constitute the grounds of defense; the facts that Respondent disputes and thus intends to place at issue in the proceeding; and whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

35. If Respondent fails in its Answer to admit, deny or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

36. Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

37. If Respondent fails to file a timely (i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, a Default Order may be issued pursuant to 40 C.F.R. § 22.17(c). Any penalty assessed in the Default Order shall become due and payable by Respondent without further proceedings thirty (30) calendar days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may seek to enforce such final Default Order against Respondent, and to collect the assessed penalty amount, in federal court.

### **VII. Opportunity to Request a Hearing**

38. In its Answer, Respondent may request a hearing upon the issues raised by the Complaint and Answer. 40 C.F.R. § 22.15(c). If Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

39. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). Any hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

40. If Respondent fails to request a hearing in its Answer, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA Order. 16 U.S.C. § 2615(a)(3).

41. Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, and only members of the public who submitted timely comments during the public notice period will have an additional thirty (30) days to petition EPA to set aside such Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is

material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

42. Neither assessment nor payment of an administrative penalty pursuant to the CWA shall affect Respondent's continuing obligation to comply with the CWA, any other federal or state laws, and with any separate Compliance Order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

### **VIII. Exhaustion of Administrative Remedies**

43. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board ("EAB"). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within thirty (30) days after the initial decision is served. Note that the forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to nor extend the thirty (30) days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

44. If Respondent fails to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30 and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

### **IX. Informal Settlement Conference**

45. Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: actions Respondent has taken to correct any or all of the violations herein alleged; any information relevant to Complainant's calculation of the proposed penalty; the effect the proposed penalty would have on Respondent's ability to continue in business; and any other special facts or circumstances Respondent wishes to raise. 40 C.F.R. § 22.18.

46. Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9533.

47. The parties may engage in settlement discussions regardless of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing in its Answer does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

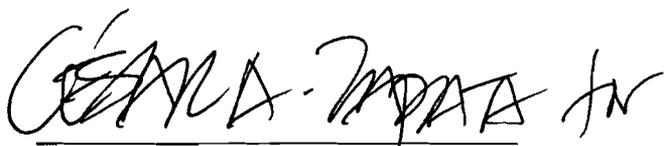
48. A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

49. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waive its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

50. Respondent's entering into a settlement through the signing of such Consent Agreement and Final Order, and its complying with the terms and conditions set forth in the such Consent Agreement and Final Order, terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

ISSUED THIS 19<sup>th</sup> DAY OF June, 2007

**BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**



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

**CERTIFICATE OF SERVICE**

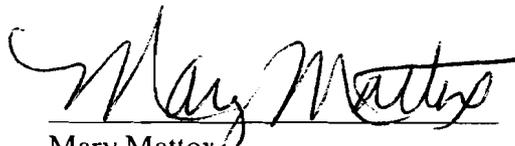
The undersigned certifies that a true and correct copy of the attached **ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED PENALTY ASSESSMENT** in the matter of Heritage Partners, LLC, Docket No. CWA-04-2007-4528 (filed with the Regional Hearing Clerk on 6/19/07, 2007) was served on 6/19/07, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: Judy Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

By certified mail,  
return receipt requested: Claude Fountain, Owner  
Heritage Partners, LLC  
2107 Fifth Avenue, North  
Birmingham, AL 35203

J. Wilson Dinsmore, Esq.  
Manager  
Heritage Partners, LLC  
2107 Fifth Avenue, North  
Birmingham, AL 35203

Steve Jenkins, Chief  
Field Operations Division  
Alabama Department of Environmental Management  
P. O. Box 301463  
Montgomery, AL 36130-1463



Mary Mattox  
Environmental Protection Specialist  
Water Programs Enforcement Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960