



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

13 2011

CERTIFIED MAIL 7010 1060 0002 1706 6559
RETURN RECEIPT REQUESTED

Mr. Richard A. Horder
Kazmarek Geiger & Laseter, LLP
3490 Piedmont Road NE, Suite 350
Atlanta, Georgia 30305

Re: Consent Agreement and Final Order
Docket No. CWA-04-2011-5509(b)

Dear Mr. Horder:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO), which has been finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Administrator. Please make note of the provisions under Section VI.

Thank you for your cooperation in settling this matter. If you have any further comments or questions regarding this matter, please contact Ms. Tanya Floyd, Associate Regional Counsel, at (404) 562-9813.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Mr. Glenn Bowman, GDOT
Mr. Shaun Blocker, U.S. Army Corps of Engineers
Ms. Robin Goodloe, U.S. Fish and Wildlife Service
Ms. Peggy Chambers, Georgia Environmental Protection Division
Ms. Katy Allen, Federal Highway Administration, Georgia Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

GEORGIA DEPARTMENT OF)
TRANSPORTATION,)
INTERSTATE 20/520 INTERCHANGE)
ROAD PROJECT,)
AUGUSTA, GEORGIA,)

RESPONDENT.)

ADMINISTRATIVE)
CONSENT AGREEMENT AND)
FINAL PENALTY ORDER)

HEARING CLERK

2011 SEP 13 PM 12:08

RECEIVED
EPA REGION IV

Docket No.: CWA-04-2011-5509(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under Section 309(g)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1), 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)(1) of the CWA, 33 U.S.C. § 1319(g)(1), 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 redelegated this authority to the Director of the Water Protection Division of EPA Region 4 (Complainant).

II. Statutory and Regulatory Background

3. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), 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)(B)]."

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [§ 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 (USACE), 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 Areas include 1,478 linear feet impacted in Cranes Creek, Raes Creek, Rock Creek, and associated tributaries in connection with Georgia Department of Transportation’s Interstate 20/520 interchange road project in Augusta, Richmond County, Georgia [identified by the Georgia Department of Transportation as project numbers NH-IM-520-1(15), NH-IM-20-2(145), CSHNS-0008-00(219)] generally near latitude 33.495833° north and longitude 82.085833° west. The Discharge Areas are indicated on the enclosed Exhibits A, B and C.

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

12. Respondent, the Georgia Department of Transportation (GDOT), at all times relevant to this Consent Agreement and Final Order, was the owner and/or operator of the Site.

13. The Georgia Department of Transportation is a “person” within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Commencing on or about June 1, 2007, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into waters of the United States on the Site using earth moving machinery, during unauthorized activities in connection with widening and reconstruction of a portion of Interstate 20 from Belair Road east to Riverwatch Parkway. To present, the unauthorized dredged and/or fill material discharged by the Respondent remains in waters of the United States.

15. Respondent's unauthorized activities impacted 1,478 linear feet of jurisdictional waters within Cranes Creek, Raes Creek, and Rock Creek, and associated tributaries, which flow into the Augusta Canal, a navigable water of the United States. The linear feet of impacts for each associated Discharge Area are specified in Exhibit C.

16. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Areas, are "pollutants" as defined under the CWA § 502(6).

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

18. A "discharge of a pollutant," as defined at § 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.

19. Respondent's placement of the dredged and/or fill material at the Discharge Areas constitutes a "discharge of pollutants" as defined under the CWA § 502(12), 33 U.S.C. § 1362(12).

20. Section 301(a) of the CWA, 33 U.S.C. §1311(a), makes unlawful the discharge of any pollutant into waters of the United States except as in compliance with certain sections of the CWA, including Section 404, 33 U.S.C. §1344. A Section 404 permit is a legal prerequisite to discharges of the type described above.

21. At no time during the discharge of dredged and/or fill material impacting 1,478 linear feet at the Discharge Areas, from on or about June 1, 2007, to the present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing such stream activities performed by Respondent.

22. The discharges have, therefore, been made in violation of Section 301(a) of the CWA.

23. Each discharge by the Respondent 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).

24. Each day the material discharged by the Respondent 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.

IV. Stipulations and Findings

25. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. Part 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. Part

22.13(b), this Administrative Consent Agreement and Final Penalty Order will simultaneously commence and conclude this matter.

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above and the factual allegations set out above.

27. Respondent hereby waives its right to contest the allegations set out above and the right to appeal the Final Order accompanying this Consent Agreement.

28. Respondent consents to the assessment of and agrees to pay the administrative penalty as set forth in this CAFO and consents to the other conditions set forth in this CAFO.

29. By signing this CAFO, 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.

30. 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 Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

31. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

V. Penalty and Payment

32. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that ONE-HUNDRED SEVENTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS (\$177,500.00) is an appropriate civil penalty to settle this action.

33. Respondent shall submit payment of the penalty specified in the preceding paragraph within 30 days of the effective date of this CAFO 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 CAFO. 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, MO 63197-9000

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

34. 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 CAFO, 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 E. Halback
U.S. Environmental Protection Agency - Region 4
Wetlands Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

35. Civil penalty payments under this CAFO 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.

36. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CAFO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CAFO), 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 CAFO shall not be subject to review.

VI. General Provisions

37. This CAFO 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 CAFO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA

38. Nothing in this CAFO 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 CAFO or of the statutes and regulations upon which this

agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

39. Except as otherwise set forth in this document, this CAFO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the CWA with respect to only those violations alleged in this CAFO. Except as otherwise set forth in this document, compliance with this CAFO shall resolve the allegations of violations contained in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CAFO. Other than as expressed in this document, 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.

40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

41. This CAFO applies to and is binding upon Respondent and any officers, directors, employees, agents, successors and assigns of the Respondent.

42. 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 CAFO.

43. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

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

For Complainant:

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

For Respondent:

Richard A. Horder
Kazmarek Geiger & Laseter LLP
3490 Piedmont Road NE, Suite 350
Atlanta, Georgia 30305
(404) 812-0843

45. The parties acknowledge and agree that this CAFO 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.

46. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

47. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

VII. Release by Respondent


48. Respondent hereby covenants not to sue and agrees 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 Site or this CAFO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.

VIII. Effective Date

49. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

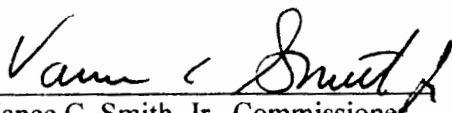


James D. Giattina, Director
Water Management Division
U.S. EPA Region 4

Date: 8/5/11

For RESPONDENT:

GEORGIA DEPARTMENT OF TRANSPORTATION



Vance C. Smith, Jr., Commissioner
Georgia Department of Transportation

Date: 7/20/2011

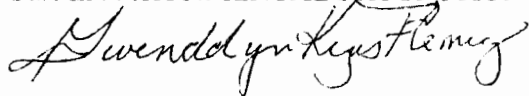
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
GEORGIA DEPARTMENT OF) FINAL PENALTY ORDER
TRANSPORTATION,)
INTERSTATE 20/520 INTERCHANGE)
ROAD PROJECT,)
AUGUSTA, GEORGIA,)
)
RESPONDENT.) Docket No.: CWA-04-2011-5509(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)(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



Gwendolyn Keyes Fleming
Regional Administrator
U.S. EPA, Region 4

Date: SEP 13 2011

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-04-2011-5509(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Ms. Constance Tallman
U.S. Environmental Protection Agency, Region 4
Wetlands Enforcement Program
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9230

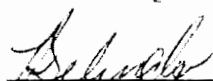
By hand-delivery:

Tanya Floyd
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9813

By Certified mail,
return receipt requested:

Richard A. Horder
Kazmarek Geiger & Laseter LLP
3490 Piedmont Road NE, Suite 350
Atlanta, Georgia 30305
(404) 812-0843

Dated: 9/13/2011



Belinda Johnson
Acting Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9686