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October 20, 2006

VIA FIRST CLASS U.S. MAIL

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

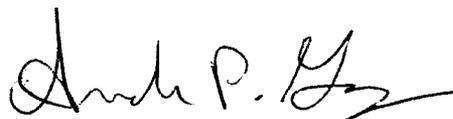
RECEIVED
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2006 OCT 24 AM 6:41
HEARINGS CLERK

RE: Answer to Administrative Complaint
Docket No. CWA-04-2006-4537
Sanders Square
Cumming, Georgia

To Whom It May Concern:

Please find enclosed an original and one copy of Sanders Square, LLC's Answer to the Administrative Complaint and Notice of Proposed Penalty Assessment in the above referenced matter.

Sincerely yours,



Andrea P. Gray
Attorney at Law

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

SANDERS SQUARE, LLC
SANDERS SQUARE
CUMMING, GEORGIA

Respondent.

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* DOCKET NO. CWA-04-2006-4537
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RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED PENALTY ASSESSMENT

COMES NOW SANDERS SQUARE, LLC, Respondent in the above-captioned matter, and files its Answer to the Administrative Complaint and Notice of Proposed Penalty Assessment and shows the Administrator as follows:

FIRST LEGAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND LEGAL DEFENSE

The Complaint fails to state a claim for which penalties may be assessed against Respondent.

THIRD LEGAL DEFENSE

Respondent asserts the defense of malicious prosecution and further states that the Complaint was filed not in the pursuit of EPA's statutorily prescribed duties but rather as

a result of malice to delay, harass, and intimidate the Respondent and for improper purposes entirely.

FOURTH LEGAL DEFENSE

Respondent asserts the defense of improper service of the Complaint on Respondent.

FIFTH LEGAL DEFENSE

Respondent reserves the right to amend this Answer and assert any additional defenses. Without waiving any of the foregoing defenses, but insisting and relying upon each of them, Respondent answers the specific allegations of the Complaint as follows:

I. Nature of the Action

1.

Respondent is without sufficient knowledge or information to admit or deny the allegations asserted in Paragraph One (1) of the Complaint. To the extent an answer is required, the allegations of said paragraph are denied.

2.

Respondent admits that Complainant requests the assessment of a civil penalty against Respondent and provides notice of the Respondent's opportunity to request a hearing on the proposed penalty assessment pursuant to Section 309(g)(2)(B) of the CWA. Respondent denies all further allegations asserted in Paragraph Two (2) of the Complaint.

II. Statutory and Regulatory Background

3.

The statute speaks for itself.

4.

The statute speaks for itself.

5.

Respondent admits the allegations asserted in Paragraph Five (5) of the Complaint.

6.

Respondent admits the allegations asserted in Paragraph Six (6) of the Complaint.

III. Allegations

7.

Respondent admits that it is a limited liability company formed under the laws of the State of Georgia.

8.

Respondent admits that at all times relevant to this action, it owned and/or operated a site known as Sanders Square located on State Route 20 and Sanders Road, Cumming, Georgia. Respondent denies the remaining allegations asserted in Paragraph Eight (8) of the Complaint.

9.

Respondent admits the allegations asserted in Paragraph Nine (9) of the Complaint.

10.

Respondent admits that Part IV.A.1 of the Permit requires completion of the Erosion, Sedimentation and Pollution Control Plan prior to submitting an NOI except as provided in Part IV.A.2., Part IV.A.3., Part IV.A.4., and Part IV.A.8. Respondent admits

that Part IV of the Permit requires that the Plan be designed, installed and maintained for the phase or phases of the common development covered by the Permit. Respondent admits that Part III.C.2. of the Permit states that failure to properly design, install, or maintain BMPs shall constitute a violation of the Permit for each day on which the failure occurs. Respondent admits that Part III.C.2. states that if during Permittee's routine inspections of the construction site, BMP failures are observed which have resulted in sediment deposition into receiving water, the Permittee shall correct the BMP failures and shall submit a summary of violations to GAEPD in accordance with Part V.A.2 of the Permit. Respondent denies all remaining allegations asserted in Paragraph Ten (10) of the Complaint.

11.

Respondent admits the allegations asserted in Paragraph Eleven (11) of the Complaint.

12.

Respondent admits the allegations asserted in Paragraph Twelve (12) of the Complaint.

13.

Respondent admits the allegations asserted in Paragraph Thirteen (13) of the Complaint.

14.

Respondent admits the allegations asserted in Paragraph Fourteen (14) of the Complaint.

15.

Respondent admits that Part IV.D.2.a.(3) of the Permit provides the standard requirements for sediment basins for common drainage locations if needed. Part IV.D.2.a.(3) further states that sediment basins may not be appropriate at some construction projects. Respondent denies all remaining allegations asserted in Paragraph Fifteen (15) of the Complaint.

16.

Respondent admits the allegations asserted in Paragraph Sixteen (16) of the Complaint.

17.

Respondent admits the allegations asserted in Paragraph Seventeen (17) of the Complaint.

18.

Respondent admits the allegations asserted in Paragraph Eighteen (18) of the Complaint.

19.

Respondent admits a representative of EPA visited the site on July 21, 2005. Respondent denies all remaining allegations asserted in Paragraph Nineteen (19) of the Complaint.

20.

Respondent denies the allegations asserted in Paragraph Twenty (20) of the Complaint. Respondent responds further as follows:

All BMP's required by the Plan were properly designed, installed, maintained, in good working condition, inspected and approved by Georgia EPD and Forsyth County. All silt fences were adequately installed and maintained. The construction entrance at Sanders Road as well as the storm drain outlet protection at the outlet of the pond was in compliance and working properly. Temporary groundcover was applied to all areas left undisturbed for more than 14 days.

21.

Respondent denies the allegations asserted in Paragraph Twenty One (21) of the Complaint. Respondent responds further as follows:

All sediment and control measures were installed in compliance with the Plan. The area where the detention pond for Phase II was to be located was in the stream buffer. A buffer variance was required to install the pond, and a buffer variance application for the pond was pending. The detention pond could not be installed until the buffer variance was issued.

Further, the area where the pond was to be located was at an elevation of 1230 feet mean sea level (msl). The plans required a 10-foot deep pond with a bottom of pond elevation of 1200 feet msl. This would require a cut of 30+ feet. In order to construct the pond so that it worked properly, it was necessary to grade the other part of the site first to balance the elevations. Without balancing the site elevations, the pond walls would have been 35 feet high and at an angle too severe for heavy equipment to perform the necessary work. Additionally, grading the site was critical to ensure that surface water from Phase II drained into the pond.

Respondent denies the allegations asserted in Paragraph Twenty Two (22) of the Complaint. Respondent responds further as follows:

The stream that originates on the Sanders Square site is not a trout stream, nor is it a tributary of a trout stream; thus, the State buffer is 25 feet. Forsyth County has an additional buffer of 25 feet for streams and an additional 25 foot impervious surface buffer. At all times relevant to the development of this site and the matters concerned in the Administrative Complaint, the buffers were clearly delineated, marked, and respected. Respondent denies that any construction or encroachment in any form has occurred at the site without a stream buffer variance. In addition to the marked buffers, the developer left vegetated areas along the buffers to increase the width of the vegetation as an additional BMP.

Photographs 14, 15 and 16 attached to the Water Compliance Inspection Report (“WCIR”) depict locations well outside of the marked 50-foot stream buffer. The silt fencing and hay bales operate as check dams as shown in the E&S plan submitted to and approved by the Natural Resources Conservation Service and Forsyth County. These check dams were located either in the additional vegetated area that was not a required stream buffer or in the 25-foot impervious surface buffer. Silt fence and hay bales are not impervious surfaces and are therefore permitted within the impervious stream buffer.

Photograph 6 attached to the WCIR shows silt fence, hay bales, rip rap and a plunge pond installed as additional BMP’s at the request of Forsyth County. This area was a critical area that was continuously maintained with additional measures added to prevent sediment from reaching the stream. This area is pictured next to one of the

vegetated areas that the developer left as an extra vegetated buffer and is well outside the buffer. In fact, this area has since been cleared, graded and the vegetation pictured has been removed as part of the site development. A concrete block retaining wall now surrounds and protects the buffer.

Forsyth County routinely inspected the site and never warned or cited Respondent for any buffer violation. Copies of Forsyth County's Inspection Reports have been submitted. As shown in the inspection reports and work logs previously submitted, the BMP's were properly installed and maintained. Any maintenance or corrective actions were made within the time allotted by the Permit and/or Forsyth County.

Further, as demonstrated in the buffer variance documents previously submitted, Respondent applied for a stream buffer variance where buffer encroachment was needed or required. No illegal construction in or encroachment on any stream buffer occurred.

23.

Respondent denies the allegations asserted in Paragraph Twenty Three (23) of the Complaint. Respondent responds further as follows:

The E&S Plan includes a timeline of major activities which are labeled "Anticipated Activity Schedule" and located on pages C.4 and C.4A, and C.4B of the Plan. The Anticipated Activity Schedule timeline appears under the vicinity map in the upper right corner on pages C.4 and C.4A. The Anticipated Activity Schedule timeline also appears on the lower left corner on page C.4B. Further, the activity schedule was submitted as an attachment to the Notice of Intent.

24.

Respondent denies the allegations asserted in Paragraph Twenty Four (24) of the Complaint. Respondent responds further as follows:

The Anticipated Activity Schedule graph in the Plan contains anticipated dates for major grading activities. Additionally, a job site schedule recording the dates of major site activities was located on the wall in the construction office on site. This job site schedule was on the wall in the office on July 21, 2005. A copy of the job site schedule was provided.

25.

Respondent denies the allegations asserted in Paragraph Twenty Five (25) of the Complaint. Respondent further responds as follows:

The Plan contains structural practices. They appear on the left side of the page on pages C.4 and C.4A, and on the right side of the page on page C.4B, under the heading "Structural Practices".

All BMP's required by the Plan were properly designed, installed, maintained, in good working condition, inspected, and approved by Georgia EPD and Forsyth County.

26.

Respondent denies the allegations asserted in Paragraph Twenty Six (26) of the Complaint. Respondent further responds as follows:

The area where the detention pond for Phase II was to be located was in the stream buffer. A buffer variance was required to install the pond, and a buffer variance

application for the pond was pending. The detention pond could not be installed until the buffer variance was issued.

Further, the area where the pond was to be located was at an elevation of 1230 feet. The plans required a 10-foot deep pond with a bottom of pond elevation of 1200 feet. This would require a cut of 30+ feet. In order to construct the pond so that it worked properly, it was necessary to grade the other part of the site first to balance the elevations. Without balancing the site elevations, the pond walls would have been 35 feet high and at an angle too severe for heavy equipment to perform the work. Additionally, grading the site was critical to ensure that surface water from Phase II drained into the pond.

Ricky Scarborough with Forsyth County directed the developer to install a 20x20x10-foot plunge pond in the lowest elevation near the site of the planned detention pond. Forsyth County also advised the developer to place large mulch dams before and after the plunge pond. These BMPs were installed as equivalent appropriate control measures prior to July 21, 2005.

The water from the portion of Phase II undergoing balance grading was directed toward the center of the site (toward Phase I) to contain it on site. Some of the Phase II water flowed into a diversion ditch (additional BMP) that directed the flow to a 20x30x8 feet second plunge pond on Phase I. The second plunge pond is shown in photographs 6 and 7 contained in the WCIR.

The portion of the site containing the plunge pond, mulch dams and diversion ditch were not inspected by the EPA representative on the site visit of July 21, 2005. The plunge pond is visible on aerial photographs.

Lastly, at the time development activities began, there was a pre-existing ditch and detention pond on the site. These were built by prior owners to handle storm water from Dunkin Donuts, the retail center, and Ingles. The original plan was to remove these structures and incorporate that flow into the permanent storm water plan for Sanders Square. Due to the extraordinary amount of rainfall the site was receiving during this period of construction, these structures were left in place to try to handle the record rainfalls. These structures were left as they were found, with the exception of removing some trees that had grown up in them from lack of maintenance.

In July 2005, Georgia experienced extreme wet weather. Atlanta received 14.63 inches of rain in July 2005. The average rainfall in Atlanta in July is 5.14 inches. The record rainfall in 2005 is attributed to Tropical Storm Cindy which hit Atlanta on July 7th and Hurricane Dennis which stalled over Georgia from July 11th through 15th.

In summary, there were four detention ponds on site at the time of the inspection which provided appropriate storage and control measures.

27.

Respondent denies the allegations asserted in Paragraph Twenty Seven (27) of the Complaint. Respondent responds further as follows:

There are no deficiencies in the construction exit shown in photograph 1 attached to the WCIR. The photograph depicts a construction exit with adequate gravel, no pot-holes, no erosion and no standing water. The small amount of discoloration in the foreground is dirt the gravel removed from tires before vehicles exited the site, which is the purpose of the gravel. The exit functions as designed and intended.

Respondent denies the allegations asserted in Paragraph Twenty Eight (28) of the Complaint. Respondent responds further as follows:

Measures describing installation and maintenance of vegetation and other control measures are included in the Plan. The vegetative measures are located on the lower right of pages C.4 and C.4A and in the upper right page on C.4B. Additional vegetative measures and other control measures are located on the Plan in the upper left corner and under "Erosion Control Notes" at the top of the plan on pages C.4 and C.4A. Additional vegetative measures are also located on the top left of page C.4B.

Ground cover is not required on areas where land disturbing activity is occurring. The Permit specifies that ground cover is required on areas where no land disturbing activity has occurred for more than 14 days. At the time of the inspection, all required temporary ground cover was in place on areas that had not been disturbed for more than 14 days. Photographs 2, 3, 4, 6, 7, 8, 9 and 10 that are attached to the WCIR inspection report show vegetation ground cover and mulch in permanent areas or areas without land disturbing activity for more than 14 days. Some of the vegetation and mulch had been damaged by the record rainfall from Tropical Storm Cindy on July 7th and Hurricane Dennis on July 11th through 15th. These areas were repaired as soon as the site dried sufficiently and equipment could perform corrective work without causing more damage and erosion.

No violations of the Plan were noted by Forsyth County or EPD on July 21, 2005. BMP maintenance resumed when the site was dry enough for equipment access without creating damage and no violations of the plan were noted in follow-up inspections. The

site inspection reports from Forsyth County and the Trip Report from EPD have been previously provided.

29.

Respondent denies the allegations asserted in Paragraph Twenty Nine (29) of the Complaint. Respondent responds further as follows:

Specific allegations are addressed more fully above and are incorporated herein by reference. All BMP's required by the Plan were properly designed, installed, maintained, in good working condition, inspected and approved by Georgia EPD and Forsyth County

30.

Respondent denies the allegations asserted in Paragraph Thirty (30) of the Complaint.

IV. Proposed Penalty

31.

Respondent denies the applicability of the proposed penalties contained in the allegations asserted in Paragraph Thirty One (31) of the Complaint. Respondent further responds that the laws speak for themselves.

32.

Respondent denies the allegations made by Complainant and therefore denies the applicability of Complainant's proposed penalty and any remaining allegations asserted in Paragraph Thirty Two (32) of the Complaint.

Respondent denies the allegations asserted in Paragraph Thirty Three (33) of the Complaint.

V. Procedures Governing This Administrative Litigation

Paragraphs Thirty Four (34) through Thirty Five (35) of the Complaint require no response.

VI. Answering the Complaint

Paragraphs Thirty Six (36) through Forty One (41) of the Complaint require no response.

VII. Opportunity to Request a Hearing

Paragraphs Forty Two (42) through Forty Six (46) of the Complaint require no response.

VIII. Exhaustion of Administrative Remedies

Paragraphs Forty Seven (47) through Forty Eight (48) of the Complaint require no response.

IX. Informal Settlement Conference

Paragraphs Forty Nine (49) through Fifty Four (54) of the Complaint require no response.

X. Solution of This Proceeding Without Hearing or Conference

Paragraphs Fifty Five (55) through Fifty Nine (59) of the Complaint require no response.

XI. Respondent's Grounds of Defense

Pursuant to the requirements set forth in Paragraph Thirty Eight (38) of the Complaint, Respondent sets forth its grounds of defense as follows:

1.

Respondent incorporates by reference its responses to Paragraph Nineteen (19) through Paragraph Thirty Three (33) of the Complaint.

2.

Respondent was and continues to be in compliance with all provisions of its NPDES permit.

3.

Respondent was and continues to be in compliance with all Clean Water Act provisions.

4.

Respondent maintains that all BMP's required by the Erosion and Sedimentation Plan were properly designed, installed, maintained, in good working condition, inspected and approved by Georgia EPD and Forsyth County, and constitute a complete defense.

5.

In July 2005, Respondent's site experienced rainfall well above average as a result of Tropical Storm Cindy and Hurricane Dennis, both Acts of God.

6.

Respondent's site received storm water from run-off from Ingles across Highway 20, the Dunkin Donuts, the adjacent retain development, the day care, Highway 20, and the DOT work on Highway 20.

7.

Respondent was and remains in compliance with the Erosion and Sedimentation Plan approved by Forsyth County.

8.

All E&S BMPs required under the plan approved by Forsyth County were in place at the time of the July 21, 2005 site visit.

9.

The EPA representative misrepresented her purpose on July 21, 2005.

10.

The report generated from the site visit is inaccurate, incomplete, and not objective.

11.

The EPA representative did not follow the procedures set forth in the NPDES inspection manual put forth by EPA.

12.

The Complaint was filed not in the pursuit of EPA's statutorily prescribed duties but rather as a result of malice to delay, harass, and intimidate the Respondent and for improper purposes entirely.

13.

Complainant did not properly serve the Complaint on Respondent.

XII. Facts at Issue in the Proceeding

Pursuant to the requirements set forth in Paragraph Thirty Eight (38) of the Complaint, Respondent sets forth the facts at issue in this proceeding:

1.

Respondent disputes the facts and/or allegations asserted by Complainant in Paragraphs Twenty (20) through Thirty Three (33) of the Complaint.

2.

Respondent incorporates by reference its responses to Paragraph Nineteen (19) through Paragraph Thirty Three (33) of the Complaint.

3.

Respondent disputes any and all additional allegations that it failed to comply with the Clean Water Act.

4.

Respondent disputes any and all additional allegations that it failed to comply with its NPDES permit.

5.

Respondent disputes any and all additional allegations that it failed to comply with the E&S Plan.

6.

Respondent disputes the applicability of the proposed penalty or of any proposed sanction.

7.

Respondent disputes any and all facts, statements or allegations made in the EPA Water Compliance Inspection Report and/or its supporting documents and photographs.

XIII. Request for Hearing

Pursuant to the requirements set forth in Paragraph Thirty Eight (38) of the Complaint, Respondent hereby requests a hearing upon the issues raised by the Complaint and Answer. In requesting said hearing, Respondent further reserves its right to pursue judicial review of an adverse EPA order.

This 20th day of October, 2006.

LAW OFFICES OF WM. THOMAS CRAIG



Wm. Thomas Craig
Ga. Bar No. 193075

1144 College Avenue
P.O. Box 1587
Covington, GA 30015
(770) 786-1320

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

**SANDERS SQUARE, LLC
SANDERS SQUARE
CUMMING, GEORGIA**

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* **DOCKET NO. CWA-04-2006-4537**
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Respondent.

CERTIFICATE OF SERVICE

I, Wm. Thomas Craig, attorney for Respondent in the above and foregoing matter, do hereby certify that I have this day served a copy of the foregoing Respondent's Answer to Administrative Complaint and Proposed Penalty by mailing a copy of the same to the following:

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

Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

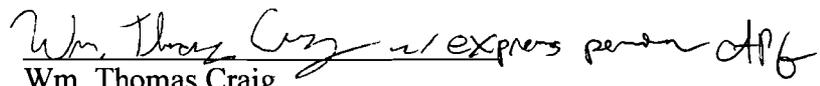
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61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

This 20th day of October, 2006.

LAW OFFICES OF WM. THOMAS CRAIG


Wm. Thomas Craig
Ga. Bar No. 193075

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Covington, GA 30015
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