



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 29 2015

CERTIFIED MAIL 7014 2870 0000 3318 3418
RETURN RECEIPT REQUESTED

Mr. Shawkey Moore
Vice President of Operations
Beazer Homes USA, Inc.
1000 Abernathy Road, Suite 260
Atlanta, Georgia 30328

Re: Consent Agreement and Final Order
Docket No. CWA-04-2015-4503(b)
Bentley Ridge Road, Cumming, Forsyth County, Georgia

Dear Mr. Moore:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or problems, please contact Mr. Ahmad Dromgoole at (404) 562-9212 or via email at dromgoole.ahmad@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Denisse D. Diaz".

Denisse D. Diaz, Chief
NPDES Permitting and Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. James Capp
Georgia Environmental Protection Division

Mr. Bert Langley
Georgia Environmental Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|--|---|---------------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| BEAZER HOMES USA, INC. |) | CONSENT AGREEMENT AND |
| ESTATES AT BENTLEY RIDGE |) | FINAL ORDER |
| CUMMING, FORSYTH COUNTY, GEORGIA, |) | |
| |) | |
| RESPONDENT. |) | DOCKET NO. CWA-04-2015-4503(b) |

CONSENT AGREEMENT

I. Statutory Authority

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. 40,176 (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. 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 Protection Division, of the EPA, Region 4, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of the EPA, Region 4 (“Complainant”).

II. Allegations

3. Beazer Homes USA, Inc. (“Respondent”) is a corporation duly organized and existing under the laws of the State of Delaware and is therefore 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, the Respondent owned and/or operated a construction site known as the Estates at Bentley Ridge (“Development”) located at 6480 Bentley Ridge Road, in Cumming, Forsyth County, Georgia.

5. 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.

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

7. GAEPD issued the Authorization to Discharge Under The National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity For Common Developments, Permit No. GAR100003 ("Permit") in accordance with the Georgia Water Quality Control Act (O.C.G.A. Code Sections 12-5-20 et seq., 1964), the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6, and the CWA. The Permit was effective September 24, 2013, and shall expire on July 31, 2018. Coverage under the Permit is obtained by submitted a Notice of Intent ("NOI") to GAEPD.

8. On December 20, 2013, Respondent submitted an NOI to GAEPD requesting coverage under the Permit at the Development. The authorization became effective on January 3, 2014, and will expire on July 31, 2018, and requires Respondent to comply with all provisions of the Permit.

9. Part IV.D.1 of the Permit requires each Erosion, Sediment and Pollution Control Plan ("Plan") to include a completed Erosion, Sedimentation and Pollution Control Plan Checklist established by the State Soil and Water Conservation Commission as of January 1 of the year in which the land disturbing activity was permitted and amendments to the applicable Checklist as approved by the State Soil and Water Conservation Commission up until the date of the NOI submittal.

10. Part IV of the Permit requires the design professional preparing the Plan to include and sign in the Plan the certification statement provided in the Permit.

11. Part IV(iii) of the Permit requires the permittee to implement and maintain the provisions of the Plan required under Part IV as a condition of the Permit.

12. Part IV.D.2.e of the Permit requires the Plan to include a site-specific map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which are not to be disturbed, the location of major structural and nonstructural controls identified in the Plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water.

13. Part IV.D.3.c(1) of the Permit requires that waste collection areas be located away from streets, gutters, watercourses, and storm drains.

14. Part IV.D.6.a(2) of the Permit requires the Plan to include a narrative on the analytical method used to collect and analyze the samples including quality control/quality assurance procedures. This narrative must include precise sampling methodology for each sampling location.

15. Part IV.D.2.f of the Permit requires the Plan to identify the receiving water(s) and areal extent of wetland acreage at the site.

16. Part III.D.1 of the Permit requires best management practices (“BMPs”) for all construction activities and that the BMPs be implemented in accordance with the design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" (“Manual”) published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted to prevent or reduce the pollution of waters of Georgia.

17. Part III.D.3 of the Permit states that a failure to properly design, install, or maintain BMPs shall constitute a violation of the Permit for each day on which such failure occurs.

18. Part V.L of the Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Permit and the Plan.

19. On March 12, 2014, the EPA performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

20. As a result of the CSWEI, the EPA has determined that stormwater associated with construction activity was discharged from the Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into unnamed tributaries to Bentley and Cobb Creeks. Cobb Creek flows into Bentley Creek, which flows into Big Creek, which flows into the Chattahoochee River, a traditional navigable water of the United States.

21. Based on the CSWEI and review of additional information, the EPA has determined that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit as follows:

A. Numerous Plan deficiencies were observed during the CSWEI. Specifically, the Plan did not include the following: the required Checklist established by the State

Soil and Water Conservation Commission in violation of Part IV.D.1 of the Permit; the signed and certified statement from the design professional preparing the Plan in violation of Part IV of the Permit; a site-specific map indicating the locations of the major structural and nonstructural controls identified in the Plan in violation of Part IV.D.2.e of the Permit; accurate identification of all receiving waters for potential discharges from the site in violation of Part IV.D.2.f of the Permit; and the required narrative on the sampling methodology, analytical methods, and quality control/quality assurance procedures used for each sampling location in violation of Part IV.D.6.a(2) of the Permit.

B. The system of BMPs implemented at the site were not working to efficiently limit or reduce the discharge of sediment from the site in violation of Parts III.D.1, III.D.3, or IV(iii) of the Permit. Sediment deposition was observed during the inspection at the outfall from the permanent sediment basin north of Lots 16/17.

C. The following BMPs at the site were observed as not being properly implemented or maintained in violation of Parts III.D.1, III.D.3, IV(iii), and/or IV.D.3.c(1) of the Permit: i) inadequate BMPs for the containment of concrete waste and wash water was observed near Lot 44; ii) portable toilets and waste bins near Lot 45 were not properly located away from streets, gutters, watercourses, and storm drains; and iii) silt fencing near Lots 44/45 and 16/17 was observed in need of maintenance.

22. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), due to its failure to comply with the Permit.

III. Stipulations and Findings

23. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

24. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

26. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

27. By signing this CA/FO, the 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. The 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.

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

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

IV. Payment

30. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that thirteen thousand five hundred dollars (\$13,500) is an appropriate civil penalty to settle this action.

31. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of the Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

32. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

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

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
NPDES Permitting and Enforcement Branch
Stormwater and Residuals Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

34. Pursuant to 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 CA/FO 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 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

35. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

36. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

37. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

38. Nothing in this CA/FO 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 CA/FO.

39. 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.

40. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

41. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

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

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

For Complainant:

Matthew Hicks
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9670

For Respondent:

Catherine Little
Hunton & Williams, LLP
Bank of America Plaza, St 4100
600 Peachtree Street, N.E
Atlanta, Georgia 30308
(404) 888-4047

44. 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 proposed CA/FO based on comments received during the public comment period.

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

46. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

47. 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 the RESPONDENT, BEAZER HOMES USA, INC.:



Kenneth F. Khoury
Executive Vice President, General Counsel, Chief Administrative Officer and Corporate Secretary
Beazer Homes USA, Inc.

Date: 8/6/2015
provided with express permission of Beazer Homes, Inc. by Ms. Diane Ellis

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:



Denisse D. Diaz, Chief
NPDES Permitting and Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 9/25/2015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
BEAZER HOMES USA, INC.) CONSENT AGREEMENT AND
ESTATES AT BENTLEY RIDGE) FINAL ORDER
CUMMING, FORSYTH COUNTY, GEORGIA,)
)
RESPONDENT.) DOCKET NO. CWA-04-2015-4503(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-29-2015



Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Beazer Homes USA, Inc., Estates at Bentley Ridge, Docket No. CWA-04-2015-4503(b) (filed with the Regional Hearing Clerk on 9-29, 2015) was served on 9-29, 2015, in the manner specified to each of the persons listed below.

By hand-delivery: Matthew Hicks
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Catherine Little
Hutton & Williams, LLP
Bank of America Plaza, St 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308

James A. Capp, Branch Chief
Watershed Protection Branch
ATTN: Jan Sammons, Unit Manager
Erosion and Sedimentation Unit
Georgia Environmental Protection Division
420 International Parkway
Suite 101
Atlanta, Georgia 30354

John Cunard, Director
Forsyth County Engineering Department
ATTN: M. Simon Wilkes, Senior Inspector/Supervisor
Erosion and Sedimentation Department
110 East Main St
Cumming, Georgia 30040



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511