



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

CERTIFIED MAIL 7005 3110 0003 6266 0943
RETURN RECEIPT REQUESTED

Keith Clark, Esq.
130 Inverness Plaza, #234
Birmingham, Alabama 35242


Re: Consent Agreement and Final Order
Docket No. CWA-04-2007-4528
Heritage Park Phase 2
McCalla, Alabama

Dear Mr. Clark:

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

Should you have any questions or problems, please contact Mr. Namon Mathews at (404) 562-9777.

Sincerely,


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

Enclosure

cc: Alabama Department of Environmental
Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

HERITAGE PARTNERS, LLC)
HERITAGE PARK PHASE 2)
MCCALLA, ALABAMA)

CONSENT AGREEMENT AND
FINAL ORDER

RESPONDENT.)

DOCKET NO. CWA-04-2007-4528)

RECEIVED
EPA REGION 4
2008 FEB -5 AM 7:55
HEATHER GLENN

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. 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").

II. Allegations

3. At all times relevant to this action, Heritage Partners, LLC ("Respondent"), was a limited liability corporation formed under the laws of the State of Alabama and, 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, Respondent owned and/or operated a construction site known as Heritage Park Phase 2 located at Eastern Valley Road South in McCalla, Alabama ("Development").

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 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, through the Department of Environmental Management ("ADEM"), approval to administer the NPDES program.

7. 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 on September 19, 2006.

8. On June 19, 2007, Complainant issued an Administrative Complaint, Docket No. CWA-04-2007-4528 pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), alleging that Respondent was in violation of Section 301 and 402(p) of the CWA, 33 U.S.C. § 1311 and 1342(p), due to its failure to comply with the Permit Regulations, and also for discharges not authorized by the Permit Regulations.

III. Stipulations and Findings

9. For purposes of this Consent Agreement and Final Order ("CA/FO"), Respondent admits the jurisdictional allegations set out above, and neither admits nor denies the factual allegations set out above and in the Administrative Complaint.

10. Respondent hereby waives its right to contest the allegations set out above and in the Administrative Complaint, and its right to appeal the Final Order accompanying this Consent Agreement.

11. 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.

12. By signing this CA/FO, 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.

13. EPA reserves the right to assess and collect any and all civil penalties for any violation described in the Administrative Complaint 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.

14. Complainant and 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

15. 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, EPA has determined that Sixteen Thousand Dollars (\$16,000.00) is an appropriate civil penalty to settle this action.

16. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) calendar 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 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.

17. 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 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 Management Division
Water Programs Enforcement Branch
Gulf Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

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

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

20. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject 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

21. This CA/FO 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 CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO or in the Administrative Complaint. Other than as expressed herein, 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.

24. 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.

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

26. 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 CA/FO.

27. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

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

For Complainant:

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

For Respondent:

Keith Clark, Esq.
130 Inverness Plaza, #234
Birmingham, AL 35242
(205) 298-9429.

29. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.


30. 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 Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

31. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

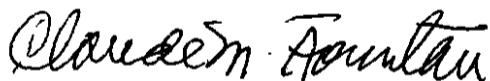

Douglas F. Mundrick, P.E.
Chief, Water Programs Enforcement Branch
Water Management Division
U.S. EPA, Region 4

Date: 1/31/08

For RESPONDENT, HERITAGE PARTNERS, LLC:

NAME: _____
TITLE: _____

Date: _____


CLAUDE M. FOUNTAIN
ITS MEMBER

6

12-10-2007

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF:)	
)	
HERITAGE PARTNERS, LLC)	CONSENT AGREEMENT AND
HERITAGE PARK PHASE 2)	FINAL ORDER
MCCALLA, ALABAMA)	
)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2007-4528
_____)	

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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Jul. 4, 2018



Susan B. Schub
Regional Judicial Officer

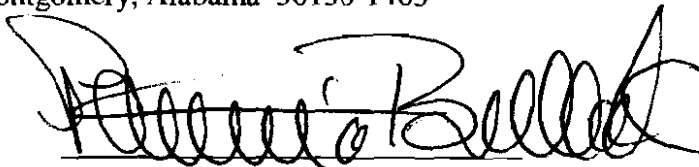
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Heritage Partners, LLC, Docket No. CWA-04-2007-4528** (filed with the Regional Hearing Clerk on **FEB 05 2008**, 2008, was served on **FEB 05 2008**, 2008, in the manner specified to each of the persons listed below.

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

By certified mail,
return receipt requested: Keith Clark, Esq.
130 Inverness Plaza, #234
Birmingham, AL 35242

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



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 1/22/08
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Heritage Park Phase 2, McCalla, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 16,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-4528

The Site Specific Superfund Account Number: _____

WMD

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |