



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 19 2009

CERTIFIED MAIL 7008 2810 0000 4316 9232  
RETURN RECEIPT REQUESTED

Mr. William C. Smith, III  
Watkins & Eager PLLC  
400 East Capitol Street  
Jackson, Mississippi 39201

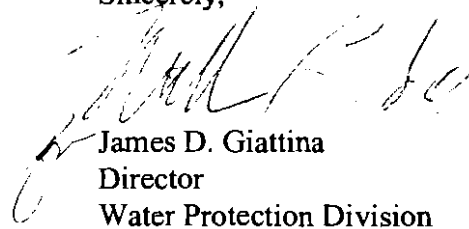
Re: Consent Agreement and Final Order  
Docket No. CWA-04-2009-4501(b)  
Flowood Town Center  
Flowood, Mississippi

Dear Mr. Smith:

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 and the Acting Regional Administrator. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or problems, please contact Mr. Kenneth Kwan at (404) 562-9752.

Sincerely,



James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Mississippi Department of Environmental  
Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2009 AUG 19 AM 11:40  
EPA REGION 4  
MISSISSIPPI  
RECEIVED

IN THE MATTER OF: )  
)  
NEOPOLIS DEVELOPMENT GROUP, )  
LLC, a Mississippi limited liability )  
Company )  
FLOWOOD TOWN CENTER, LLC, )  
a Mississippi limited liability company )  
)  
RESPONDENTS. ) DOCKET NO. CWA-04-2009-4501(b)  
\_\_\_\_\_ )

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 ("Complainant"), who in turn has delegated this authority to the Director of the Water Protection Division of EPA Region 4 (Complainant).

**II. Allegations**

3. Neopolis Development Group, LLC, and Flowood Town Center, LLC (Respondents) are limited liability corporations formed under the laws of the State of Mississippi and are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondents owned and/or operated a construction site known as Eastlake at Flowood Town Center ("Development") located at Hogg Creek and East Metro Corridor, Flowood, Mississippi.

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. EPA has granted the State of Mississippi, through the Department of Environmental Quality (“MDEQ”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. MDEQ issued the *Large Construction Storm Water General Permit For Land Disturbing Activities of 5 or More Acres to Discharge Storm Water in Accordance with the National Pollutant Discharge Elimination System (NPDES)*, Permit No. MSR10 (“Permit”) in accordance with the provisions of the Mississippi Water Pollution Control Law (Mississippi Code Ann. Sections 49-17-1 *et seq.*, and the regulations and standards adopted and promulgated thereunder) and the CWA. The Permit was effective June 10, 2005, with an expiration date of May 31, 2010. The Permit is a Mississippi statewide NPDES general permit governing storm water point source discharges associated with construction activities, including clearing, grading, and excavation activities that result in land disturbance of five (5) acres or more or less than five (5) acres if part of a “larger common plan of development or sale.”

8. Pursuant to Condition No. S-1 of the Permit, coverage under the Permit is obtained by submitting a Large Construction Notice of Intent (“LCNOI”) form at least thirty (30) days prior to the commencement of construction, or fifteen (15) days if a Storm Water Pollution Prevention Plan (“SWPPP”) has previously been approved.

9. On May 5, 2006, Respondents submitted to MDEQ a LCNOI requesting permit coverage. A Notice of Coverage was sent to Respondents with an effective date of August 21, 2006, and an expiration date of May 31, 2010.

10. Section ACT6, Condition T-1 of the Permit requires the Development and implementation of a SWPPP. The SWPPP must be prepared in accordance with sound engineering practices and shall identify potential sources of pollution which may affect the quality of storm water discharges associated with construction activity. The SWPPP shall describe and ensure the implementation of best management practices (“BMPs”) which will reduce pollutants in storm water discharges and assure compliance with the terms and conditions of the Permit.

11. Section ACT6, Condition T-2(4) of the Permit requires implementation of BMPs to mitigate adverse impacts from storm water runoff.

12. Section ACT6, Condition T-3 of the Permit requires that erosion and sediment controls must be designed in accordance with the standards set forth in the most current edition

of the "Planning and Design Manual for the Control of Erosion, Sediment & Stormwater" or other recognized manual of design.

13. Section ACT6, Condition T-4(3) of the Permit requires that, for drainage locations that serve an area with ten (10) or more disturbed acres at one time, a temporary (or permanent) sediment basin, providing at least 3,600 cubic feet (133 cubic yards) of storage per acre drained shall be provided until final stabilization of the site. Sediment basins must be installed before major site grading.

14. Section ACT6, Condition T-9 of the Permit provides that the SWPPP shall require the owner or operator to implement controls as needed to prevent erosion and adverse impacts to state waters.

15. Section ACT7, Condition S-1(5) of the Permit requires installation of needed erosion controls even if they may be located in the way of subsequent activities; i.e., utility installation, grading or construction. Condition S-1(5) provides that "it shall not be an acceptable defense that controls were not installed because subsequent activities would require their replacement or cause their destruction."

16. Section ACT8, Condition L-1 of the Permit requires that storm water discharges shall be free from: (1) debris, oil, scum and other floating materials other than in trace amounts; (2) eroded soils and other materials that will settle to form objectionable deposits in receiving waters; (3) suspended solids, turbidity and color at levels inconsistent with the receiving waters; and (4) chemicals in concentrations that would cause violations of water quality criteria.

17. Section ACT11, Condition T-2 of the Permit requires that all reasonable steps be taken to minimize or prevent any discharge in violation of the Permit which is likely to adversely affect human health or the environment.

18. Section ACT11, Condition T-12 of the Permit requires the operation of backup or auxiliary facilities when necessary to achieve compliance with permit conditions.

19. On November 13, 2007, representatives of EPA in conjunction with MDEQ and the City of Ridgeland performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondents' Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the MDEQ Permit.

20. As a result of the CSWEI, EPA, Region 4 determined that storm water associated with industrial 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.

21. During the CSWEI, EPA observed the following:

- A. Some BMPs specified in the SWPPP were not installed, and other BMPs specified in the SWPPP had been installed but were later removed:
- 1) The SWPPP specified that silt fence will be installed on all slopes and between the Development and Hogg Creek. No silt fencing was in place at the soil stockpile area, the slope area, or between the Development and Hogg Creek, in violation of Section ACT6, Conditions T-1 and T-9 of the Permit, which require the owner or operator, in disturbing an area, to implement controls as specified in the SWPPP and to prevent erosion and adverse impacts to state waters.
  - 2) Four (4) sediment basins were taken out and later filled up to grade prior to the CSWEI. No equivalent, backup or temporary controls were in place to meet the minimum permit design requirement of 3,600 cubic feet of sediment basin storage per acre drained, in violation of Section ACT6, Condition T-4(3) of the Permit, which requires that a sediment basin providing at least 3,600 cubic feet of storage per acre drained shall be provided until final stabilization of the site. Also, Neopolis Development Group failed to comply with the requirement to install needed erosion controls even if they may be located in the way of subsequent activities, such as utility installation, grading or construction per Section ACT7, Condition S-1(5) of the Permit. That Section further states that it shall not be an acceptable defense that controls were not installed because subsequent activities would require their replacement or cause their destruction. Finally, Respondents failed to comply with Section ACT11, Condition T-12 of the Permit, which requires the operation of backup or auxiliary facilities when necessary to achieve compliance with permit conditions.
- B. Highly turbid water was observed in Hogg Creek at the check dam area. Respondents failed to provide for adequate BMPs to minimize, prevent, and mitigate the adverse impacts of storm water runoff as required by Section ACT6, Conditions T-2(4) and T-9, Section ACT8, Condition L-1, and Section ACT11, Condition T-2 of the Permit.
- C. The SWPPP stated that flow in Hogg Creek will remain uninterrupted until completion of the weir construction and establishment of the lake system. However, two (2) check dams and rip rap were installed in Hogg Creek as part of the erosion and sediment control system. Placing BMPs in a live stream is inconsistent with standards set forth in Mississippi's "Planning and Design Manual for the Control of Erosion, Sediment &

Stormwater” and with the SWPPP, and was in violation of Section ACT6, Conditions T-1 and T-3.

22. Therefore, Respondents have violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the MDEQ Permit; and also for discharges not authorized by the MDEQ Permit.

### **III. Stipulations and Findings**

23. Complainant and Respondents 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, Respondents admit the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

25. Respondents hereby waive their right to contest the allegations set out above and to appeal the Final Order accompanying this Consent Agreement.

26. Respondents consent to the assessment of and agree to pay the civil penalty as set forth in this CA/FO and consent to the other conditions set forth in this CA/FO.

27. By signing this CA/FO, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize 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. 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 Respondents was materially false or inaccurate at the time such information or certification was provided to EPA.

29. Complainant and Respondents 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and

40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that thirty thousand dollars (\$30,000) is an appropriate civil penalty to settle this action.

31. Respondents 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 names of Respondents 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, Respondents 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  
Clean Water Enforcement Branch  
West NPDES Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

34. 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 three percent (3%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

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

36. This CA/FO shall not relieve Respondents of their 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.

37. Nothing in this CA/FO 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 Respondents' violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondents' violation of any federal or state statute, regulation or permit.

38. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondents 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. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondents, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondents 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.

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 Respondents and their officers, directors, employees, agents, successors and assigns.



41. Any change in the legal status of Respondents, including but not limited to any transfer of assets of real or personal property, shall not alter Respondents' 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 relating to this proceeding.

For Complainant:

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  
(404) 562-9576

For Respondents:

Richard Ridgway  
Neopolis Development Group, LLC  
10 Canebrake Boulevard, Suite 110  
Flowood, Mississippi 39232

With copy to:

William C. Smith, III  
Watkins & Eager PLLC  
400 East Capitol Street  
Jackson, MS 39201  
(601) 965-1809

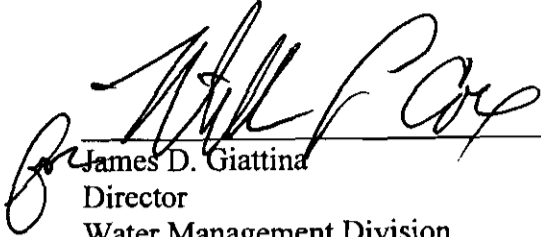
44. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

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

#### **VI. Effective Date**

46. 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:**

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

Date: 7/1/09

**For RESPONDENT:**

Neopolis Development Group, LLC  
A Mississippi limited liability company

By:   
\_\_\_\_\_  
Richard L. Ridgway, Manager

Date: 5/21/09

**For RESPONDENT:**

Flowood Town Center, LLC  
A Mississippi limited liability company

By: Neopolis Development Group, LLC, Manager

By:   
\_\_\_\_\_  
Richard L. Ridgway, Manager

Date: 5/21/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 ) CONSENT AGREEMENT AND  
NEOPOLIS DEVELOPMENT GROUP, )  
LLC ) FINAL ORDER  
FLOWOOD TOWN CENTER, LLC, )  
 )  
RESPONDENTS ) DOCKET NO. CWA-04-2009-4501(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. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondents are hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/12/09

J. Scott Clark  
for A. Stanley Meiburg  
Acting Regional Administrator  
U.S. EPA, Region 4

**CERTIFICATE OF SERVICE**

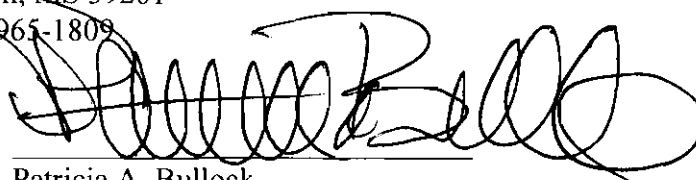
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Neopolis Development Group, LLC, and Flowood Town Center, LLC, Docket No. CWA 04-2009-4501(b) (filed with the Regional Hearing Clerk on AUG 19 2009, 2009, was served on AUG 19 2009, 2009, in the manner specified to each of the persons listed below.

By hand-delivery: Paul Schwartz  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested: Richard Ridgway  
Neopolis Development Group  
10 Canebrake Boulevard, Suite 110  
Flowood, Mississippi 39232

Chris Sanders  
Chief, Environmental Compliance and Enforcement Division  
Mississippi Department of Environmental Quality  
P. O. Box 10385  
Jackson, Mississippi 39289-0385

William C. Smith, III  
Watkins & Eager PLLC  
400 East Capitol Street  
Jackson, MS 39201  
(601) 965-1809



Patricia A. Bullock  
Regional Hearing Clerk  
Sam Nunn Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

**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 6/26/09  
(Name) (Date)

In the WPD/CWEB/West NPDES Enforcement Section 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: Negopolis Development Group, LLC - Flowerd. Town Center, MS  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 30,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2009-4501(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: Water Protection Division

**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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>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<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|