



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**CERTIFIED MAIL** 7006 0810 0004 1131 0349 **JUL 20 2010**  
**RETURN RECEIPT REQUESTED**

Mr. Ken Duty  
Project Executive  
Clark/Caddell, A Joint Venture  
2502 N. Rocky Point Drive, Suite 400  
Tampa, Florida 33607

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2010-4511(b)  
SATOC Trainee Barracks at Harmony Church  
Fort Benning, Georgia

Dear Mr. Duty:

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 Regional Judicial Officer. Please make note of the provisions under Paragraph IV Penalty.

Should you have any questions or concerns, please contact Becky Fauver at (404) 562-9758.

Sincerely,

César A. Zapata, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Georgia Environmental Protection  
Division  
Department of Army  
Directorate of Public Works  
Environmental Management Division

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
)  
CLARK/CADDELL, A JOINT VENTURE )  
SATOC TRAINEE BARRACKS AT )  
HARMONY CHURCH )  
FORT BENNING, GEORGIA )  
)  
RESPONDENT. ) DOCKET NO. CWA-04-2010-4511(b)

2010 JUL 20 AM 7:08  
EPA REGION 4  
RECEIVED  
TRAINING CENTER

**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 Protection Division, EPA, Region 4, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch, EPA, Region 4 (“Complainant”).

**II. Allegations**

3. At all times relevant to this action, Clark/Caddell, A Joint Venture (“Respondent”), was a partnership formed under the laws of the State of Georgia and is 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 SATOC Trainee Barracks at Harmony Church (“Development”) located at Axton Road and Old Cusseta Highway, in Fort Benning, 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 a 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 stormwater, into navigable waters subject to specific terms and conditions. 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 Stormwater Discharges Associated With Construction Activity For Stand Alone Construction Projects*, Permit No. GAR100001 ("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 August 1, 2008, and shall expire on July 31, 2013. Coverage under the Permit is obtained by submitting a Notice of Intent ("NOI") to GAEPD and developing an Erosion, Sedimentation and Pollution Control Plan ("Plan").

8. The Permit is a Georgia statewide NPDES general permit governing stormwater point source discharges associated with construction activities including; clearing, grading, and excavation activities, except operations that result in the disturbance equal to or greater than one (1) acre of total land area which are not part of a larger common plan of development or sale.

9. On July 25, 2008, Respondent submitted to GAEPD an NOI for its Development requesting permit coverage. A Notice of Coverage was sent to Clark/Caddell, A Joint Venture with an effective date of July 25, 2008, and an expiration date of December 31, 2009.

10. Part III.D.2 of the Permit states that the failure to properly design, install or maintain Best Management Practices ("BMPs") shall constitute a violation of the Permit for each day on which such failure occurs.

11. Part IV.D.3.c(2) of the Permit requires the Plan to contain BMPs to minimize or eliminate to the maximum extent practicable off-site vehicle tracking of dirt, soils and sediments and the generation of dust.

12. Part IV.D.5 of the Permit requires the Plan to contain a description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures.

13. Part V.D of the Permit requires the Permittee to take all reasonable steps to

minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.

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

15. On February 26, 2009, representatives of EPA, in conjunction with GAEPD, Fort Benning Directorate of Public Works Environmental Management Division, and the Army Corps of Engineers, performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at Respondent's 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 GAEPD Permit.

16. As a result of the CSWEI, EPA has determined that stormwater 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.

17. During the CSWEI, EPA inspectors observed the following:

- A. Sediment deposition was observed off-site beyond Outfall B within a designated wetlands area in violation of Part V.D of the Permit.
- B. The BMPs to control vehicle tracking of sediment were not effective as required by Part IV.D.3.c(2) of the Permit. A layer of sediment was observed on the road along the construction site.
- C. BMPs were not implemented properly as required by Parts III.D.2 and V.L of the Permit. Specifically, the rock protection at the outfall for the piped creek through the Development had sediment build up, and the curb inlet protection was not properly implemented.

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

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

19. Complainant and 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.

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

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

22. 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.

23. 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.

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

25. 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**

26. 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 thirty-two thousand and four hundred dollars (\$32,400.00) is an appropriate civil penalty to settle this action.

27. 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 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

28. 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

Ms. 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

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

30. 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**

31. 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.

32. 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 Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

33. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and 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. Nothing in this CA/FO is intended to nor 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. 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.

34. 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.

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

36. 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.

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

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

For Complainant:

Wilda Cobb  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9530

For Respondent:

Ken Duty  
Project Executive  
Clark/Caddell, A Joint Venture  
2502 N. Rocky Point Drive, Suite 400  
Tampa, Florida 33607  
(408) 595-4796

39. 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.

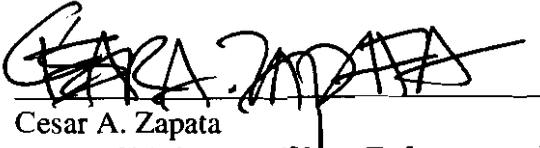
40. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

41. 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:**

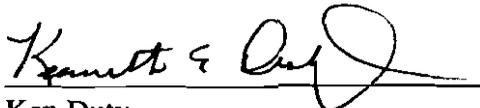
**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**



Cesar A. Zapata  
Acting Chief, Clean Water Enforcement Branch  
Water Protection Division

Date: 5/26/10

**For RESPONDENT:**



Ken Duty  
Project Executive  
Clark/Caddell, A Joint Venture

Date: 5/18/2010

<b>IN THE MATTER OF:</b>	)	
<b>CLARK/CADDELL, A JOINT VENTURE</b>	)	<b>FINAL ORDER</b>
<b>SATOC TRAINEE BARRACKS AT</b>	)	
<b>HARMONY CHURCH</b>	)	
<b>FORT BENNING, GEORGIA</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>DOCKET NO. CWA-04-2010-4511(b)</b>
<hr/>		

**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: July 19, 2010

Susan B. Schub  
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 **SATOC Trainee Barracks at Harmony Church, Docket No. CWA-04-2010-4511(b)** (filed with the Regional Hearing Clerk on JUL 20 2010, 2010) was served on JUL 20 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Wilda Cobb  
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: Ken Duty  
Project Executive  
Clark/Caddell, A Joint Venture  
2502 N. Rocky Point Drive, Suite 400  
Tampa, Florida 33607

James A. Sommerville  
Chief, Program Coordination Branch  
Georgia Environmental Protection Division  
2 Martin Luther King Jr., Drive, S.E.  
East Floyd Tower, Suite 1452  
Atlanta, Georgia 30334-9000

Date: 7-20-10



Ms. 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

**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 5/26/10  
(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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: SATOC Trainee Barracks Harmony Church, Ft. Benning, GA  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 32,400  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4511(b)

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

Water Protection Division

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<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)  |
|  | 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)    |

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM  
PROGRAM SPECIFIC INFORMATION  
PROGRAM: \_\_\_\_\_**

Case Docket Control Number: CWA-04-2010-4511(b)

Total Amount Due: \$32,400

Full payment due 30 days after issuance date of Signed CA/FO

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____