



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

SEP 27 2012

CERTIFIED MAIL 70113500000320640154
RETURN RECEIPT REQUESTED

Mr. Joel B. Setzer, P.E.
Division Engineer
Division of Highways
North Carolina Department of Transportation
253 Webster Road
Sylva, North Carolina 28779

Re: Consent Agreement and Final Order No. CWA-04-2012-4515(b)
Upward Road (SR-1783)
Hendersonville, North Carolina

Dear Mr. Setzer:

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

Should you have any questions or concerns regarding this matter, please contact Ms. Sara Schiff at (404) 562-9870 or via email at schiff.sara@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Charles Waklid
North Carolina Department of Environment and Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2012 SEP 27 PM 1:08
HEARING CLERK

IN THE MATTER OF:)
)
NORTH CAROLINA DEPARTMENT OF) CONSENT AGREEMENT AND
TRANSPORTATION) FINAL ORDER
UPWARD ROAD-SR-1793)
HENDERSONVILLE, NORTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2012-4515(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. 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. 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, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. The North Carolina Department of Transportation ("Respondent"), is a state agency 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, the Respondent owned and/or operated a construction site known as Upward Road-SR-1783 ("Development") located at Upward Road in Hendersonville, North Carolina.

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.

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 North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. On September 28, 2009, the Respondent submitted an application for a stormwater discharge permit.

8. The NCDENR issued *Permit No. NCS000250 to Discharge Stormwater And Borrow Pit Wastewater under the Under the National Pollutant Discharge Elimination System*, ("Permit") to the North Carolina Department of Transportation in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective September 1, 2010, and shall expire on September 9, 2015.

9. Part II.D.1.a of the Permit requires NCDOT to implement appropriate erosion and sediment control practices; require site inspections and enforcement of control measures; and establish controls for waste at the construction site that may cause adverse impact to water quality.

10. Part IV.B.1 of the Permit requires the Permittee to properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit.

11. Part II.D.1.b.ii of the Permit requires NCDOT to incorporate into its erosion and sediment control program the requirements of *General Permit- NCG 010000 to Discharge Stormwater Under the National Pollutant Discharge Elimination System for Construction Activities* ("General Permit"), issued October 1, 2001, as subsequently amended. The General Permit expires July 31, 2016.

12. Part I.A.1 of the General Permit requires the permittee to submit an Erosion and Sediment Control Plan ("Plan") for approval prior to the commencement of land disturbing activity.

13. Part I.A.2 of the General Permit requires the permittee to implement the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the General Permit, unless to correct an emergency or to make a minor modification, in which case the deviation must be noted on the approved Plan.

14. Part I.A.4 of the General Permit requires the permittee to select, install, implement and maintain Best Management Practices (“BMPs”) and control measures that minimize pollutants in the discharge to meet the requirements of the General Permit.

15. Part I.B.5 of the General Permit requires the permittee to take immediate on-site action to control the discharge of sediments if visible sedimentation is leaving the site or entering receiving waters. Where visible deposition of sediment has occurred in surface waters or wetlands, the permittee must contact NCDENR within twenty-four (24) hours of becoming aware of the deposition.

16. Part I.B.6 of the General Permit requires the permittee to keep a record of inspections. Such records must provide the details of each inspection including observations, and actions taken in accordance with the General Permit, as well as all rainfall and monitoring observations.

17. Part I.C.1 of the General Permit requires compliance with Final Limitations and Controls once disturbance has begun on the site until completion of construction or development and establishment of a permanent groundcover.

18. Part I.C.2 of the General Permit requires the permittee to provide operation and maintenance necessary to operate stormwater measures and all erosion and sedimentation control measures at optimum efficiency.

19. Part I.C.3 of the General Permit requires the permittee to perform maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment or other pollutants as soon as possible and before the next storm event if inspections identify a need for such actions.

20. Part II.B.1 of the General Permit requires compliance with all conditions of the General Permit. Any General Permit noncompliance constitutes a violation of the CWA.

21. Part II.B.2 of the General Permit requires the permittee to take all reasonable steps to minimize or prevent any discharge in violation of the General Permit which has a reasonable likelihood of adversely affecting human health and the environment.

22. Part II.C.1 of the General Permit requires the Permittee to properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the General Permit.

23. On March 3, 2011, representatives of the EPA, in conjunction with NCDENR, 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 Code of Federal Regulations (“C.F.R.”) § 122.26 and the General Permit.

24. During the CSWEI, the EPA inspectors provided a copy of an “NPDES Inspection Observation Form” to the Respondent’s representatives. As noted on the “NPDES Inspection Observation Form” and in the CSWEI Report, the following was observed:

A. NCDOT did not implement the approved Plan as required by Part II.D.1.b.ii of the Permit and Parts I.A.2 and II.B.1 of the General Permit. A pre-existing drainage ditch on the east side of Case Street did not have the proper rip rap installation as per the Plan; a pipe slope drain near Howard Gap Road and Upward Road was not denoted in the Plan; and a temporary diversion between skimmer basin #1 and #2 was not installed according to the Plan.

B. NCDOT did not install and maintain BMPs and control measures to minimize the discharge of pollutants as required by Parts II.D.1.a, II.D.1.b.ii and IV.B.1 of the Permit, and Parts I.A.4, I.C.1, I.C.2, I.C.3, II.B.1, II.B.2 and II.C.1 of the General Permit. Perimeter silt fencing needed maintenance or replacement near the sediment trap north of Upward Road, towards Howards Gap Road, near the drainage ditch at the corner of 925 Upward Road, at the pipe slope drain west of UT #1 of Bat Fork Creek, and at the ditch near Case Street. Stabilization was needed north of Upward Road, along the drainage ditch near the intersection of Upward Road and Howard Gap Road, near the corner of 925 Upward Road, along the pipe slope drains opposite 925 Upward Road and west of UT #1 of Bat Fork Creek, along Upward Road, at the outfall and slopes of the skimmer basins, and at the outfall of the UT to Kings Creek. Rock check dam maintenance was needed at the intersection of Upward Road and Howard Gap Road, at the foot of pipe slope drain at 925 Upward Road, at the drainage ditch leading into the skimmer basin, at the sediment trap near the UT of Kings Creek, and at the drainage ditch along Case Street. Maintenance was needed at the skimmer basin baffles and the pipe slope drain west of UT #1 of Bat Fork Creek.

C. NCDOT did not complete inspection reports as required by Parts II.D.1.a and II.D.1.b.ii of the Permit, and Parts I.B.6 and II.B.1 of the General Permit. Some of the inspection reports were not completed, including inspection reports from November 2010 to early January 2011.

D. NCDOT did not take adequate actions to control the discharge of sediment from entering the receiving streams as required by Parts II.D.1.a, II.D.1.b.ii and IV.B.1 of the Permit, and Parts I.B.5, I.C.3, II.B.1 and II.B.2 of the

General Permit. Sediment was observed in the UT #1 and UT #2 of Bat Fork Creek, and in the UT of King Creek.

25. Therefore, the 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 Permit and General Permit, and also for discharges not authorized by the Permit and General Permit.

III. Stipulations and Findings

26. 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.

27. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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

33. 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 fifteen thousand dollars (\$15,000) is an appropriate civil penalty to settle this action.

34. 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 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

35. 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
Atlanta Federal Center
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
Municipal and Industrial Enforcement Section
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

37. 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

38. 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.

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

40. 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. 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. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the 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.

41. 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.

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

43. 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.

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

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

For Complainant:

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

For the Respondent:

Tammy A. Bouchelle
Assistant Attorney General
NC Department of Justice
Transportation Section
1505 Mail Service Center
Raleigh, North Carolina 27699-1505
(919) 707-4480

46. 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.

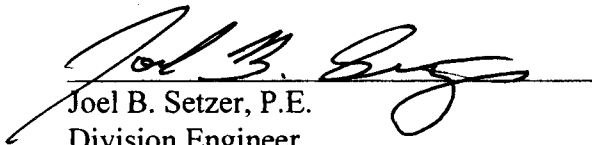
47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

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

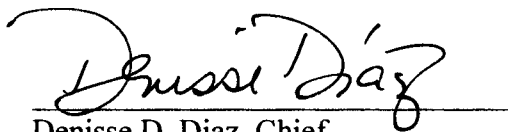
AGREED AND CONSENTED TO:

For RESPONDENT, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:


Joel B. Setzer, P.E.
Division Engineer
Division 14
Division of Highways
North Carolina Department of Transportation

Date: August 15, 2012

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


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

Date: 9/27/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

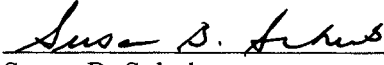
IN THE MATTER OF:)
)
NORTH CAROLINA DEPARTMENT OF) CONSENT AGREEMENT AND
TRANSPORTATION) FINAL ORDER
UPWARD ROAD-SR-1783)
HENDERSONVILLE, NORTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2012-4515(b)
_____)

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: 9/27/2012



Susan B. Schub
Regional Judicial Officer

Docket No. CWA 04-2012-4515(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT**
AGREEMENT AND FINAL ORDER in the matter of CWA-04-2012-4515(b) Docket No.
CWA-04-2012-4515(b) (filed with the Regional Hearing Clerk on SEP 27 2012), was
served on SEP 27 2012, in the manner specified to each of the persons listed below.

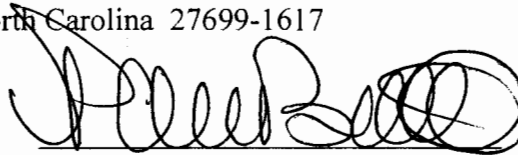
By hand-delivery:

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

By certified mail,
return receipt requested:

Tammy A. Bouchelle
Assistant Attorney General
NC Department of Justice
Transportation Section
1505 Mail Service Center
Raleigh, North Carolina 27699-1505

Charles Waklid
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 8/23/12
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree.
USAO COLLECTS. | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement.
FMS COLLECTS PAYMENT. |
| <input type="checkbox"/> SF Judicial Order/Consent Decree.
FMS COLLECTS. | <input type="checkbox"/> Other Receivables |
| <input type="checkbox"/> This is an original debt. | <input type="checkbox"/> This is a modification. |

PAYEE: NC DOT - Upward Road (SR-1783), Hendersonville, NC
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 15,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2012-4515(b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

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/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044 | 2. Originating Office (ORC)
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 sent to:

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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2012-4515(b)

Total Amount Due: \$ 15,000

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

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