



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

MAY 29 2009

CERTIFIED MAIL 7007 2680 0001 3597 7075
RETURN RECEIPT REQUESTED

Miles Freedman, Managing Member
Louisburg Plaza, LLC
14600 Weston Parkway, Suite 200
Cary, North Carolina 27513

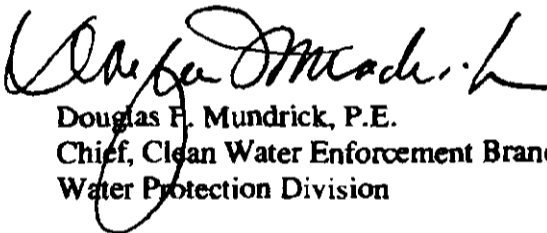
Re: Consent Agreement and Final Order No. CWA-04-2009-4509(b)
Louisburg Plaza
Louisburg, North Carolina

Dear Mr. Freedman:

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 Section IV. Payment.

Should you have any questions or problems, please contact Amanda Driskell at (404) 562-9735.

Sincerely,



Douglas F. Mundrick, P.E.
Chief, Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: North Carolina Department of Natural
Resources, Division of Water Quality
North Carolina Department of Natural
Resources, Division of Land Resources

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Louisburg Plaza, LLC)
Louisburg Plaza)
Louisburg, North Carolina)
)
RESPONDENT.)

CONSENT AGREEMENT AND
FINAL ORDER

DOCKET NO. CWA-04-2009-4509 (E)

RECEIVED
MAY 29 PM 4:11
EPA REGION 4

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, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Louisburg Plaza, LLC, ("Respondent"), was a limited liability corporation formed under the laws of the State of North Carolina and, therefore, 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 Louisburg Plaza ("Development") located at North Carolina Highway 401, in Louisburg, 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.

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 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. NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG010000 ("Permit") in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective October 1, 2001, and expires September 30, 2006. The Permit was reissued with an effective date of October 3, 2006, with an expiration date of September 30, 2008. The Permit was administratively extended to June 30, 2009, or until such time as a new draft permit is finalized.

8. The NCDENR Division of Land Resources, Land Quality Section, is responsible for the issuance, compliance and enforcement of North Carolina General Statute 113A-54.1, the rules adopted by the North Carolina Sedimentation Control Commission, and the issuance of the Permit upon submission and approval of an Erosion and Sediment Control Plan ("Plan").

9. On November 26, 2007, Respondent submitted a Plan to NCDENR seeking approval for coverage under the Permit. The NCDENR issued its approval of the Plan on December 20, 2007.

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

11. Part I.B.1 of the Permit requires the inspection of all erosion and sediment control facilities at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event greater than 0.5 inches of rain per twenty-four (24) hour period; a rain gauge shall be maintained on the site and a record of the rainfall amounts and dates shall be kept.

12. Part I.B.2 of the Permit requires the inspection of all storm water run-off discharges at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event greater than 0.5 inches of rain per twenty-four (24) hour period and take immediate corrective action to control the discharge of sediments if any visible sedimentation is leaving the disturbed limits of the site.

13. Part I.B.3 of the Permit requires a record of inspections, to be made available upon request, to be kept. Such record shall include visible sedimentation found outside the disturbed limits of the site, an explanation of measures taken to control future releases, and measures taken

to clean up sediment beyond the disturbed limits of the site.

14. Part I.C.2 of the Permit requires the Permittee to provide operation and maintenance necessary to operate storm water controls at optimum efficiency.

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

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

17. Part II.C.1 of the Permit requires the proper operation and maintenance of all facilities and systems for treatment and control which are installed or used to achieve compliance with the conditions of the Permit.

18. On September 23, 2008, representatives of EPA, in conjunction with NCDENR, performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Development to evaluate the treatment and discharge of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 Code of Federal Regulations ("C.F.R.") § 122.26, and the Permit.

19. 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.

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

A. Storm water controls were not being operated and/or maintained as required by Part I.C.2 and Part II.C.1 of the Permit. Silt fencing southwest of Temporary Sediment Trap ("TST") #1 was leaning and/or is 1/2-3/4 full of sediment and therefore in need of maintenance. Additional silt fencing was needed at the crossing of the unnamed tributary ("UT") to Wolfpen Branch. Silt fencing on northeastern side of sediment trap located at the Highway 401 entrance was down and needs repair. TST #1, Skimmer Basin, Sediment Basin #2, TST #2, TST #5, and TST 401 were all in need of additional stabilization of the walls of the traps/basins. Additional rip rap was needed TST #1 and TST #2 weirs. Sediment needed to be removed from the emergency overflow area of the Skimmer Basin. Outlet protection was needed at the Skimmer Basin outlet pipe. The rip rap structure south of the Skimmer Basin was greater than 3/4 full of sediment and about to be overtopped; sediment needed to be removed and the structure maintained. There was sediment collecting in the Sediment Basin #2 outlet pipe that needed to be removed. TST #5 baffles were down in some places and in need of maintenance. TST #5 was approximately 3/4 full of sediment that needed to be removed. Diversion ditch #5, leading into the Skimmer Basin, needed stabilization. The rip rap outlet protection in place at the Pocket Wetland

#1 outlet has collected some sediment and needed maintenance and additional rip rap. There was also some sediment outside the limits of disturbance below the Pocket Wetland #1 outlet and TST 401 that needed to be removed. Stabilization of the soil pile located on the southeastern corner of TST #1 was needed. The slope to the east of the Skimmer Basin overflow area needed stabilization. Slopes at the crossing of the UT to Wolfpen Branch needed stabilization. Areas downstream of the Skimmer Basin outlet pipe needed additional stabilization.

B. Reasonable steps were not taken to minimize or prevent discharges which have a reasonable likelihood of adversely affecting human health and the environment, as required by Part II.B.2 of the Permit. There was evidence that sediment had entered the UT of Wolfpen Branch downstream of the Skimmer Basin outlet and the rip rap structure below the Skimmer Basin outlet. Slopes at the crossing of the UT to Wolfpen Branch needed stabilization; there was evidence that sediment had entered the UT of Wolfpen Branch from this location.

C. The Plan was not implemented as approved, as required by Part I.A.2 of the Permit. A rip rap structure south of the Skimmer Basin outlet pipe and TST 401 were not identified on the approved Plan. The rip rap outlet protection described in the Plan was not installed properly at the Sediment Basin #2 outlet.

D. Inspection reports did not include information regarding the inspection of all erosion and sediment control facilities, as required by Part I.B.1; on some reports nothing was listed under facility identification or only one or two specific measures were listed. Inspections of all erosion and sediment control facilities were not always done at least once every seven (7) calendar days, as required by Part I.B.1 of the Permit. The June 30, 2008, inspection report was not signed, as required by Part II.B.10. Inspection reports did not always include information on the inspection of all storm water run-off discharges, as required by Part I.B.2 of the Permit. The storm water discharge observation section was left blank on the reports dated May 26, 2008, June 2, 2008, June 9, 2008, June 15, 2008, June 23, 2008, July 13, 2008, and July 21, 2008. The storm water discharge observations were made but the facility inspected was not identified on July 28, 2008 and August 31, 2008 inspection reports. On the inspection reports dated August 25, 2008, September 8, 2008, and September 14, 2008, storm water discharge observations were made at only one or two specific discharges and the remaining locations were not mentioned.

E. Inspection reports did not include an explanation of any corrective actions taken to address sediment discharges, measures taken to control future releases, and measures taken to clean up sediment beyond the disturbed limits of the site, as required by Part I.B.2 and Part I.B.3 of the Permit. Several inspection reports noted corrective actions that were needed but were not followed-up on subsequent reports with the corrective actions that were actually done. The June

30, 2008, inspection report noted that sediment had left the limits of disturbance at the Hwy 401 entrance and still remained outside the limits of disturbance at this location. The inspection report included some actions that needed to be done to mitigate the situation but the report did not include actual actions taken, measures taken to control future releases, and/or measures taken to clean up sediment. Inspection reports did not note any sediment outside the limits of disturbance near the Skimmer Basin and the UT of Wolfpen Branch crossing; however, sediment was observed entering the UT of Wolfpen Branch at these locations.

21. 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 NCDENR Permit, and also for discharges not authorized by the NCDENR Permit.

III. Stipulations and Findings

22. 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.

23. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above in paragraphs 1-17 and neither admits nor denies the factual allegations set out above in paragraphs 18-21.

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

25. 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.

26. 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.

27. 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.

28. 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

29. 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 five thousand dollars (\$5,000) is an appropriate civil penalty to settle this action.

30. 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

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
East NPDES Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

32. 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 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.

33. 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

34. 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.

35. 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.

36. 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.

37. 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.

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

39. 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.

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

41. 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
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9533

For Respondent:

Sean M. Sullivan, Esq.
Williams Mullen
3200 Beechleaf Court, Suite 500
Raleigh, North Carolina 27619
(919) 981-4000

42. 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.


43. 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

44. 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 B. Mundrick, P.E.
Chief, Clean Water Enforcement Branch
Water Protection Division

Date: 4/24/09

For RESPONDENT, LOUISBURG PLAZA, LLC:



Name: Betsy F. Dark
Title: Member

Date: April 15, 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Louisburg Plaza, LLC) CONSENT AGREEMENT AND
Louisburg Plaza) FINAL ORDER
Louisburg, North Carolina)
)
RESPONDENT.) DOCKET NO.CWA-04-2009-4509(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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/29/09

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 **Louisburg Plaza, LLC**, Docket No. **CWA-04-2009-4509(b)** (filed with the Regional Hearing Clerk on MAY 29, 2009, 2009, was served on MAY 29, 2009, 2009, in the manner specified to each of the persons listed below.

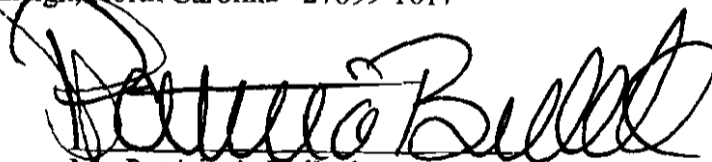
By hand-delivery:

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

By certified mail,
return receipt requested:

Sean M. Sullivan, Esq.
Williams Mullen
3200 Beechleaf Court, Suite 500
Raleigh, North Carolina 27619

Coleen H. Sullins
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
Sam Nunn Federal Center
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 4/24/09
(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: Louisburg Plaza LLC, North, Carolina
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 5,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA 04-2009-4509(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
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
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|