



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 29 2013

CERTIFIED MAIL 7012 1010 0001 8097 3796

RETURN RECEIPT REQUESTED

Mr. Donald E. Whitaker
Executor of Estate of Ronald G. Overcash
1150 Shelton Road
Concord, North Carolina 28027

Re: Consent Agreement and Final Orders No.

Docket No. CWA-04-2013-4504(b), JA Jones Property, Kannapolis, NC

Docket No. CWA-04-2013-4505(b), Whispering Winds Subdivision Phase, Kannapolis, NC

Docket No. CWA-04-2013-4506(b), Yates Mill Subdivision, Concord, NC

Docket No. CWA-04-2013-4507(b), Heartland Place Subdivision, Concord, NC

Dear Mr. Whitaker:

Enclosed please find a fully executed copy of the Consent Agreement and Final Orders, 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 Mr. Namon Mathews at (404) 562-9777.

Sincerely,

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

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

Enclosure

cc: Mr. Charles Wakild, Division of Water Quality
North Carolina Department of Environment and Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2013 MAR 29 PM 3:25
HEADING CLERK

IN THE MATTER OF:) CONSENT AGREEMENT AND
) FINAL ORDER
OVERCASH GRAVEL & GRADING CO., INC.)
WHISPERING WINDS SUBDIVISION PHASE 2)
KANNAPOLIS, NORTH CAROLINA) DOCKET NO. CWA-04-2013-4505(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 (“EPA” or “Complainant”).

II. Allegations

3. At all times relevant to this action, Overcash Gravel & Grading Co., Inc. (“Respondent”), is an individual doing business in the State of North Carolina and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a construction site known as Whispering Winds Subdivision Phase 2 (“Development”) located at Trinity Church Road, Kannapolis, 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 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. The 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 applicable Permit at times relevant to this action became effective October 1, 2001, and was subsequently reissued with an expiration date of September 30, 2008.

8. At times relevant to this action, the NCDENR Division of Land Resources, Land Quality Section, or an approved local program, in this case Cabarrus County, was responsible for the enforcement of North Carolina General Statute 113A-54.1, the rules adopted by the North Carolina Sedimentation Control Commission, and approval of coverage under the NCDENR Permit upon submission and approval of an Erosion and Sediment Control Plan (“Plan”).

9. On May 30, 2001, Respondent submitted a Plan for the Development to Cabarrus County. Cabarrus County approved the Plan on July 5, 2001.

10. Part I.A.2 of the Permit required the Respondent to implement the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit.

11. Part I.B.1 of the Permit required the Respondent to maintain a rain gauge at the Development, and to keep records of rainfall amounts and dates.

12. Part I.B.2 of the Permit required the Respondent to take corrective action immediately to control the discharge of sediments if any visible sedimentation leaves the disturbed limits of the Development.

13. Part I.B.3 of the Permit required the Respondent to keep a record of inspections, to be made available upon request. Such record shall include visible sedimentation found outside the disturbed limits of the Development, an explanation of measures taken to control future releases, and measures taken to clean up sediment beyond the disturbed limits of the Development.

14. Part I.C.1 of the Permit required the Respondent to comply with Final Limitations and Controls specified for storm water discharges once disturbance has begun at the Development, until completion of construction or establishment of a permanent groundcover.

15. Part I.C.2 of the Permit required the Respondent to provide operation and maintenance necessary to operate storm water controls at optimum efficiency.

16. Part II.B.2 of the Permit required the Respondent to take 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.

17. Part II.C.1 of the Permit required the Respondent to properly operate and maintain all facilities and systems of treatment and control which were installed or used to achieve compliance with the conditions of the Permit.

18. On March 15, 2007, representatives of the EPA, in conjunction with Cabarrus County performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the 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 Permit.

19. As a result of the CSWEI, the 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, the EPA inspectors observed the following:

A. The Plan was not implemented as approved, as required by Parts I.A.2 and I.C.1 of the Permit. Respondent failed to install protection at a storm drain inlet off of Chamar Circle near Lot #17, and at the outfalls of adjacent culverts behind Lot #15. Required silt fence protection behind Lots #17, #18 and #19, was installed at the time of the inspection. Additionally, ground cover was not established around the outfall structures of the adjacent culverts behind Lot #15 or at various individual lots that were unsold.

B. There was no rain gauge on-site, as required by Part I.B.1 of the Permit.

C. Sediment discharges were observed in the unnamed tributary of Afton Run Creek, and no corrective action was taken, as required by Parts I.B.2 and II.B.2 of the Permit.

D. Inspection records were not available at the time of inspection as required by Part I.B.3 of the Permit.

E. Storm water controls were not being maintained and operated at optimal efficiency, as required by Parts I.C.2 and II.C.1 of the Permit. Respondent failed to maintain adequate groundcover at an outfall structure between Lots #17 and #18, and on the banks of

adjacent culverts behind Lot #15. Respondent also failed to maintain sediment that had been tracked off site and deposited on Chamar Circle road.

21. Therefore, Respondent 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 for discharges not authorized by the Permit.

III. Stipulations and Findings

22. 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.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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

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 including financial documentation regarding Respondent's ability to pay, the EPA has determined that Three Hundred Fourteen Dollars (\$314.00) is an appropriate civil penalty to settle this action.

30. 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

31. 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

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

33. 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

34. 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.

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 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.

36. 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.

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 the Respondent and its officers, directors, employees, agents, successors and assigns.

39. 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.

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

For Respondent:

Donald E. Whitaker
Executor of Estate of Ronald G. Overcash
1150 Shelton Road
Concord, North Carolina 28027

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.

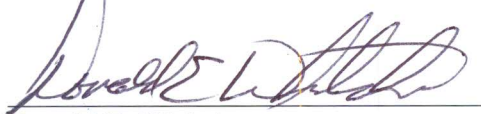
43. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), the EPA represents that the State of North Carolina was provided a prior opportunity to consult with the EPA regarding this matter.

VI. Effective Date

44. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the EPA Region 4 Regional Hearing Clerk.

AGREED AND CONSENTED TO:

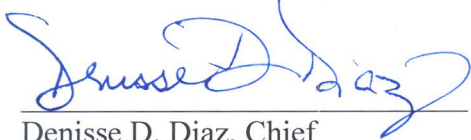
For OVERCASH GRAVEL & GRADING CO., INC:



Donald E. Whitaker
Executor of Estate of Ronald G. Overcash

DATE: 2-8-13

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

DATE: 3/29/13

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT**

AGREEMENT AND FINAL ORDER in the matter of Overcash Gravel & Grading Co., Inc.

Docket No. CWA-04-2013-4505 (b) (filed with the Regional Hearing Clerk on **MAR 29 2013**

2013, was served on **MAR 29 2013** 2013, in the manner specified to each of the persons

listed below.

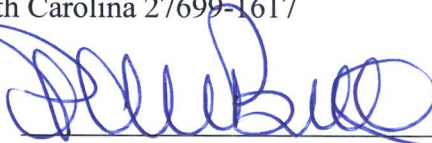
By hand-delivery:

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:

Gerald L. Pouncey, Jr.
Morris, Manning & Martin
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326-1044

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
Sam Nunn Federal Center
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511