



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2015

CERTIFIED MAIL 7014 2870 0000 3318 3616
RETURN RECEIPT REQUESTED

Ms. Joan Sasine
Bryan Cave LLP
One Atlantic Center, 14th Floor
1201 West Peachtree Street NW
Atlanta, Georgia 30309-3471

Re: Consent Agreement and Final Order
Docket No.: CWA-04-2015-4513(b)
New Atlanta Stadium Project

Dear Ms. Sasine:

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 Region 4, and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Mr. Mark Robertson at (404) 562-9639 or via email at robertson.mark@epa.gov or Ms. Carol Baschon, Associate Regional Counsel at (404) 562-9528 or via email at baschon.carol@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "James D. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Mr. James Capp
Georgia Environmental Protection Division

Mr. Alex H. Comer
City of Atlanta
Watershed Protection Department

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
Holder, Hunt, Russell, Moody,)	FINAL ORDER
A Joint Venture)	
New Atlanta Stadium site)	
Atlanta, Fulton County, Georgia)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2015-4513(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40,176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. 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, of the EPA, Region 4 (“Complainant”).

II. Allegations

3. The Georgia World Congress Center Authority, or GWCCA, is a government agency existing under the laws of the State of Georgia and is, 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, Holder, Hunt, Russell, Moody, or HHRM, (“Respondent”) was a joint venture 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).

5. At all times relevant to this action, the GWCCA owned and the Respondent operated a construction site known as the New Atlanta Stadium Project (“Development”) located at 1414 International Boulevard, Atlanta, Fulton County, Georgia.

6. 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.

7. 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 Georgia, through the Georgia Environmental Protection Division (“GAEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

8. 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 September 24, 2013, and shall expire on July 31, 2018. Coverage under the Permit is obtained by submitted a Notice of Intent (“NOI”) to GAEPD.

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

10. On January 4, 2014, Respondent submitted an NOI to GAEPD requesting coverage under the Permit to discharge stormwater associated with construction activity for the Development.

11. Part II.A.3 of the Permit states that an enforcement action may be initiated for any unauthorized discharges of stormwater.

12. Part III.A of the Permit prohibits non-stormwater discharges except in specific identified circumstances.

13. Part III.D.1 of the Permit requires best management practices (“BMPs”) for all construction activities and requires implementation in accordance with the design specifications contained in the “Manual for Erosion and Sediment Control in Georgia” (“Manual”) published

by the State Soil and Water Conservation Commission, as of January 1st of the year in which the land disturbing activity was permitted, to prevent or reduce the pollution of waters.

14. Part III.D.3 of the Permit provides that the failure to properly design, install, or maintain BMPs shall constitute a violation of the Permit for each day on which such failure occurs.

15. Part III.D.5 of the Permit states that, when the Permittee has elected to sample outfalls, the discharge of stormwater runoff from disturbed areas where BMPs have not been properly designed, installed and maintained shall constitute a separate violation for each days on which such condition results in the turbidity of the discharge exceeding the Appendix B value.

16. Part IV of the Permit requires the Permittee to design, install and maintain an Erosion, Sedimentation and Pollution Control Plan (“Plan”) for the Development. Part IV.C of the Permit requires the Plan to be amended if it proves to be ineffective.

17. Part IV.D.2.e of the Permit requires the Plan to include a site-specific map indicating the locations where storm water is discharged to a surface water and the location of all the BMPs.

18. Part IV.D.3.c.5 of the Permit requires the Plan to include BMPs for concrete washdown of tools, concrete mixer chutes, hoppers and the rear of vehicles. This provision prohibits washdown of concrete drums at the construction site.

19. Part IV.D.6.d.3 of the Permit provides that the permittee shall sample each area of the Development that discharges to a receiving water or from an outfall for specified events that occur (a) after all clearing and grubbing operations have been completed but before completion of mass grading operations and (b) 90 days after the first sampling event or after all mass grading operations have been completed, but prior to submittal of a notice to terminate coverage under the Permit.

20. Part V.L of the Permit requires the Permittee to, at all times, 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 BMP Plan.

21. On November 5, 2014, the EPA, GAEPD, and the City of Atlanta performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, its implementing regulations at 40 C.F.R. § 122.26, and the Permit.

22. As a result of the CSWEI, the EPA has determined that stormwater associated with construction 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, into the City of Atlanta’s Municipal Separate Storm Sewer (MS4) stormwater collection system, which flows through the City’s North Avenue Combined Sewer Overflow (CSO) to the RM Clayton

wastewater treatment plant. The North Avenue CSO periodically discharges to Proctor Creek, which is a traditional navigable water of the United States.

23. Based on EPA's observations during the CSWEI and review of information provided to the EPA by the Respondent, the EPA has determined that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit. The CSWEI and other information indicate that:

A. The stormwater collection systems along the northwest and north side of the property were receiving non-stormwater discharges, specifically concrete washout water and drilling liquids, in violation of Parts III.A, III.D.1, and IV.D.3.c.5 of the Permit.

B. The concrete washout area and drilling liquids pit observed during the CSWEI were not identified in the Plan as authorized stormwater outfalls, in violation of Part IV.D.2.e of the Permit.

C. The concrete washout area did not meet the design requirement for such areas in the Plan, as it did not contain a plastic/vinyl lining to prevent the washout water from escaping or seeping into the ground but instead was designed to route washout water into the City of Atlanta's MS4 stormwater collection system for the northeast area of the Development, in violation of Parts Part III.D.1 and 3 of the Permit.

D. The drilling liquids BMP was ineffective as it did not prevent drilling liquids being discharged into the MS4 stormwater drain, in violation of Part III.D.3 of the Permit.

E. Respondent did not collect samples following any qualified rain event after clearing and grubbing operations were completed on June 9, 2014 through the date of the CSWEI, in violation of Part IV.D.6.d.3 of the Permit.

F. Samples collected by Respondent after the CSWEI indicated that turbidity in the discharge exceeded 50 NTU at all four sampling locations and Respondent did not produce evidence that all BMPs in the area of each sampling location were properly designed, installed, and maintained, in violation of Parts III.D.5 and IV.D.6.d.3 of the Permit.

G. The site map, date stamped by a professional engineer on October 15, 2014, did not identify all of the BMPs specified in the ESPCP, and did not identify all of the outfalls, as required by Part IV.D.2.e of the Permit.

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

III. Stipulations and Findings

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that forty-five thousand dollars (\$45,000) is an appropriate civil penalty to settle this action.

33. 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 the 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

34. 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
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
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

36. 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

37. 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.

38. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

39. 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.

40. 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.

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 related to this proceeding:

For Complainant:

Carol F. Baschon
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9528

For Respondent:

Joan B. Sasine
One Atlantic Center, 14th Floor
1201 W. Peachtree St., NW
Atlanta, GA 30309
(404) 572-6647

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 proposed CA/FO 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

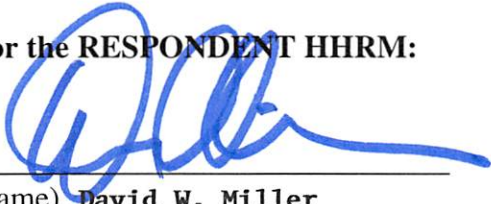
48. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

49. 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:

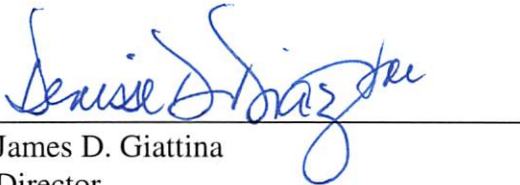
For the RESPONDENT HHRM:



(name) **David W. Miller**
Holder, Hunt, Russell, Moody, A Joint Venture

Date: 8/13/12

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



James D. Giattina
Director
Water Protection Division
U.S. EPA, Region 4

Date: 9/29/15

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
Holder, Hunt, Russell, Moody,)	FINAL ORDER
A Joint Venture)	
New Atlanta Stadium Project)	
Atlanta, Fulton County, Georgia)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2015-4513(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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-30-15



Heather McTeer Toney
Regional Administrator
U.S. EPA, Region 4

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Holder, Hunt, Russell, Moody, New Atlanta Stadium site, **Docket No. CWA-04-2015-4513(b)** (filed with the Regional Hearing Clerk on 9-30, 2015) was served on 9-30, 2015, in the manner specified to each of the persons listed below.

By hand-delivery:

Carol F. Baschon
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

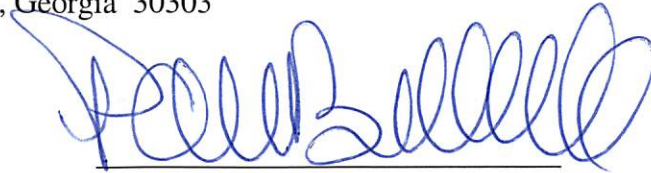
By certified mail,
return receipt requested:

Joan B. Sasine
One Atlantic Center, 14th Floor
1201 W. Peachtree St., NW
Atlanta, GA 30309
(404) 572-6647

James A. Capp, Branch Chief
Watershed Protection Branch
Georgia Environmental Protection Division
2 Martin Luther King Jr. Drive, Suite 1152 East
Atlanta, Georgia 30354

Alex H. Comer, Watershed Manager
City of Atlanta
Department of Watershed Management
Office of Watershed Protection

Division of Environmental and Construction Enforcement
72 Marietta Street, NW
Atlanta, Georgia 30303



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