



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

AUG 10 2010

CERTIFIED MAIL 7006 0810 0004 1131 0424
RETURN RECEIPT REQUESTED

Mr. Marty D. Propst, P.C.
Attorney and Counselor at Law
7000 Regent Parkway, Suite 101
Fort Mill, South Carolina 29715

Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-4517(b)
Fallbrook
Fort Mill, South Carolina

Dear Mr. Propst:

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

Should you have any questions or concerns regarding this matter, please contact Mr. Humberto Guzman at (404) 562-8942.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

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

Enclosure

cc: South Carolina Department of Health
and Environmental Control
Tammy Marain, York County

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

EARL COULSTON)
FALLBROOK)
FT. MILL, SOUTH CAROLINA)

RESPONDENT)

) CONSENT AGREEMENT AND
) FINAL ORDER

) DOCKET NO. CWA-04-2010-4517(b)

2010 AUG 30 PM 12:49
HEARING CLERK
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. Earl Coulston ("Coulston") is an individual doing business in the State of South Carolina and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Coulston owned and/or operated a construction site known as Fallbrook ("Development") located at Regent Parkway and Farmhouse Drive in York County, South 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 stormwater, into navigable waters subject to specific terms and conditions. EPA has granted the State of South Carolina through the South Carolina Department of Health and Environmental Control ("SCDHEC") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The SCDHEC issued a *NPDES General Permit for Stormwater Discharges From Large and Small Construction Activities*, Permit No. SCR100000 ("Permit") in accordance with the Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and the CWA. The Permit was effective September 1, 2006, and has an expiration date of August 31, 2011.

8. The SCDHEC is responsible for the issuance, compliance, and enforcement of the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 *et seq.*, 1976, and the approval of coverage under the Permit upon submission of a Notice of Intent ("NOI").

9. On March 7, 2005, Coulston submitted to SCDHEC an NOI requesting permit coverage. A Notice of Coverage was sent to Coulston with an effective date of August 4, 2008, and an expiration date of August 4, 2013.

10. Part 3.6.A of the Permit requires all erosion and sediment control measures and other protection measures be maintained in effective operating condition. If self-inspections identify Best Management Practices ("BMPs") that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event.

11. Part 3.6.C of the Permit requires the removal of sediment from sediment traps or sedimentation ponds as indicated in the Storm Water Pollution and Prevention Plan (SWPPP) or when the design capacity has been reduced by 50%, whichever occurs first.

12. Part 3.10.A of the Permit requires inspection of the Development at least once every seven (7) calendar days or at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater, and retention of the records of the inspections.

13. Part 3.12.A of the Permit requires retention of the SWPPP, copy of the Permit, NOI, and Notice of Coverage Letter at the construction site or other location easily accessible during normal business hours, with a notice of the location posted at the construction entrance.

14. Part 3.13.A of the Permit requires control measures to be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

15. Part 3.13.B of the Permit requires the removal of off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts.

16. Part 3.13.D of the Permit requires initiation of stabilization measures as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

17. Part 3.13.E of the Permit requires a combination of sediment and erosion control measures to achieve maximum pollutant removal.

18. Part 3.13.F of the Permit requires velocity dissipation device at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course.

19. Part 4.4 of the Permit requires the selection, implementation, and maintenance of BMPs that minimize pollutants in the discharge or as necessary to meet water quality standards.

20. On December 9, 2008, representatives of EPA in conjunction with SCDHEC and York County performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 126.26, and the Permit.

21. As a result of the CSWEI, EPA, Region 4 has determined that Respondent discharged stormwater associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

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

- A. Inspection records required by Part 3.10.A of the Permit were not available for review.
- B. There was no notice of the location of the SWPPP, Permit, NOI, and the Notice of Coverage Letter posted at the Development, as required by Part 3.12.A of the Permit.
- C. Erosion controls were not properly operated or maintained, as required by Parts 3.6.A, 3.6.C, 3.13.A, 3.13.D, 3.13.E, 3.13.F, and 4.4 of the Permit. Silt fences had fallen and/or were over 50% full of sediment; storm drain inlets were unprotected; a slope was unstabilized on the eastside sedimentation pond; check dams were full or overflowing with sediment; rip rap was dislodged and in the outfall channel; stabilization was needed at some areas of the Development; and several storm drains were not properly connected to a sediment pond.
- D. Several storm drain inlets that were not connected to a sedimentation pond discharged directly into a tributary leading to Sugar Creek, and sediment was observed in the tributary to Sugar Creek due to the lack of maintenance or improper installation of erosion control devices. The sediment had not been removed as required by Part 3.13.B of the Permit.

23. 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 SCDHEC Permit.

III. Stipulations and Findings

24. 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.

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

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

27. 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.

28. 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.

29. 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.

30. 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

31. 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 **fifteen thousand dollars (\$15,000.00)** is an appropriate civil penalty to settle this action.

32. 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

33. 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
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

35. 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

36. 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.

37. 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.

38. 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.

39. 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.

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

41. 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.

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

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

For Complainant:

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

For Respondent:

Mr. Marty D. Propst, P.C.
Attorney and Counselor at Law
7000 Regent Parkway, Suite 101
Fort Mill, South Carolina 29715
(803) 396-5555

44. 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.


45. 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 South Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

46. 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:

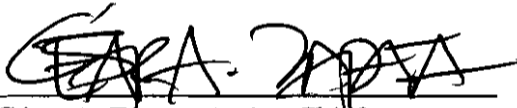
For RESPONDENT FALLBROOK SUBDIVISION:



Earl Coulston

Date: 6-10-10

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 6/25/10

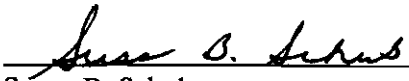
IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
EARL COULSTON)	FINAL ORDER
FALLBROOK)	
FT. MILL, SOUTH CAROLINA)	
)	
RESPONDENT)	DOCKET NO. CWA-04-2010-4517(b)
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FINAL ORDER

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: 8/9/2010



 Susan B. Schub
 Regional Judicial Officer

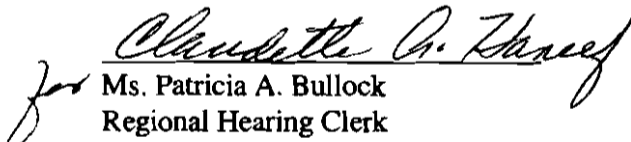
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED PENALTY ASSESSMENT in the matter of Earl Coulston, Docket No. CWA-04-2010-4517(b) filed with the Regional Hearing Clerk on August 10, 2010, was served on August 10, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Wilda Cobb
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: Mr. Marty D. Propst, P.C.
Attorney and Counselor at Law
7000 Regent Parkway, Suite 101
Fort Mill, South Carolina 29715

David Wilson
Chief, Bureau of Water
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201


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) 562-9511-9511

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 6/18/10
(Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: EARL Coulston - Fallbrook - Ft. Mill, SC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 15,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4517(b)

The Site Specific Superfund Account Number: _____

Water Protection Division

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |