



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**Jul 13 2007**

CERTIFIED MAIL 7005 3110 0003 6266 0318  
RETURN RECEIPT REQUESTED

Mr. Tommy Craig, Esq.  
Law Offices of Wm. Thomas Craig  
1144 College Avenue  
Post Office Box 1587  
Covington, GA 30015

SUBJ: Consent Agreement and Final Order  
Docket No. CWA-04-2006-4537  
Sanders Square  
Cumming, Georgia

Dear Mr. Craig:

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 Administrator. Please make note of the provisions under Paragraph IV. Penalty.

Should you have any questions or concerns regarding this matter, please contact Araceli Bonilla at (404) 562-9790.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giattina".

James D. Giattina, Director  
Water Management Division

Enclosure

cc: Georgia Environmental Protection  
Division



6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (“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 Georgia, through the Georgia Environmental Protection Division (“GAEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The GAEPD issued the Georgia General Permit, Permit No. GAR100001, *Authorization to Discharge Under the National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity for Stand Alone Construction Projects* (“the 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 August 13, 2003, and shall expire on July 31, 2008.

8. The Permit is a Georgia statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, and excavation activities except operations that result in the disturbance of less than one (1) acre of total land area which are not part of a larger common plan of development or sale.

9. On February 7, 2005, the Respondent submitted to the GAEPD a Notice of Intent (“NOI”) requesting coverage under the Permit. A notice of coverage was sent by GAEPD to Respondent.

10. Part IV.A.1 of the Permit requires completion of an Erosion, Sedimentation and Pollution Control Plan (“Plan”) prior to submitting an NOI. Part IV of the Permit further requires that the Plan be designed, installed and maintained for the entire construction activity covered by the Permit. Part III.C.2 of the Permit states that failure to properly design, install, or maintain Best Management Practices (“BMPs”) shall constitute a violation of the Permit for each day on which such failure occurs. Part III.C.2 further provides that, if during the Permittee’s routine inspections of the construction site, BMP failures are observed which have resulted in sediment deposition into receiving waters, the Permittee shall correct the BMP failures and shall submit a summary of violations to GAEPD in accordance with Part V.A.2 of the Permit.

11. Part IV.(i) and (iii) of the Permit require that, other than certain specified exceptions, no construction activities shall be conducted within a twenty-five (25) foot buffer along the banks of all state waters and the buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed.

12. Part IV.D.1 of the Permit requires that the Plan include a description and chart or timeline of the intended sequence of major activities which would disturb soils on major portions of the site.

13. Part IV.D.2.a.(1) of the Permit requires that the Plan include a record of the dates when major grading activities would occur.

14. Part IV.D.2.a.(2) of the Permit requires the development and implementation of a Plan containing a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the Site to the degree attainable.

15. Part IV.D.2.a.(3) of the Permit requires, for common drainage locations, a temporary (or permanent) sedimentation basin providing at least 1800 cubic feet (67 cubic yards) of storage per acre drained, or equivalent control measures.

16. Part IV.D.2.c.(2) of the Permit requires that off-site vehicle tracking of dirt, soils and sediments and the generation of dust shall be minimized or eliminated to the maximum extent practical.

17. Part IV.D.4 of the Permit requires that each Plan shall contain a description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

18. Part V.L of the Permit requires the Permittee to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which were installed or used by the Permittee to achieve compliance with the conditions of the Permit and with the required plans.

19. On July 21, 2005, representatives of EPA in conjunction with the GAEPD performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Respondent's Facility. The purpose of EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility and determine whether the Facility was in compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

20. The CSWEI revealed that the Respondent failed to comply with Part III.C.2 of the Permit by failing to properly design, install, or maintain BMPs. During the CSWEI, it was noted that silt fences installed before the buffer zone were not adequate and were allowing sediment-laden water into the pond before being discharged. In addition, sediments were being discharged from the temporary sediment basin at the time of the inspection. There was no storm drain inlet or sediment trap installed at the temporary sediment basin near Nuckolls Road, and erosion was occurring at the drainage ditch parallel to State Road 20 and Buford Highway. The CSWEI also revealed that additional stone was needed on the track-out pad located on Sanders Road, and that maintenance was needed at the rock outlet of the storm drain inlet/outlet. EPA inspectors further observed that temporary groundcover was not being maintained throughout the site at the time of the inspection and sediment was observed off-site from the temporary drainage ditch down slopes and from the temporary sedimentation basin.

21. The CSWEI revealed that the Respondent failed to comply with Part IV of the Permit by failing to install Erosion and Sediment Control measures as specified in the Plan, including a second sedimentation basin.

22. The CSWEI revealed that the Respondent failed to comply with Part IV.(i) and (iii) of the Permit by allowing construction activities within the twenty-five (25) foot buffer. Silt fences and hay bales were observed in the buffer zone and sediment laden water was ponding and allowing sediment discharges into the receiving water at the time of the inspection.

23. The CSWEI revealed that the Respondent failed to comply with Part IV.D.1 of the Permit by failing to include in the Plan a description and chart or timeline of the intended sequence of major activities which would disturb soils on major portions of the site. The Plan reviewed during the inspection did not contain this information.

24. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(1) of the Permit by failing to ensure that the Plan contained a record of the dates when major grading activities were to occur. The Plan reviewed during the inspection did not contain this information.

25. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(2) of the Permit by failing to ensure that the Plan contained a description of, and failing to implement, structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the maximum extent practicable. During the CSWEI, discharges of sediment were occurring from the temporary drainage ditch, down slopes, and from the temporary sedimentation basin due to inadequate stabilization of these areas.

26. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(3) of the Permit by failing to implement a Plan requirement for common drainage locations, a temporary (or permanent) sedimentation basin providing at least 1800 cubic feet (67 cubic yards) of storage per acre drained, or equivalent control measures. The site covers over 45 disturbed acres. The Respondent's Plan called for the installation of two sedimentation basins; only one sedimentation basin had been installed for drainage at the time of the inspection.

27. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.c.(2) of the Permit by failing to ensure that off-site vehicle tracking of dirt, soils and sediments and the generation of dust was minimized or eliminated to the maximum extent practical. Additional stone was needed at the entrance/exit located on Sanders Road at the time of the inspection.

28. The CSWEI revealed that the Respondent failed to comply with Part IV.D.4 of the Permit by failing to ensure that the Plan contained a description of, and failing to implement, procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures. At the time of the inspection temporary groundcover measures were not maintained on disturbed and sloped areas.

29. The CSWEI revealed that the Respondent failed to comply with Part V.L of the Permit by failing to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which were installed or used by the Permittee to achieve compliance with the conditions of this Permit and with the required Plans. Inadequate maintenance or installation problems were observed during the CSWEI on silt fences in the buffer zone, on the storm drain inlet, on the temporary sedimentation basin, on check dams above the sediment traps on the commercial site, on the temporary drainage ditch, on the diversion structures, on the entrance/exit track-out pad on Sanders Road, on the rock outlet at the storm drain inlet/outlet, and on temporary ground cover on disturbed and sloped areas.

30. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) by failing to comply with Part III.C.2, Part IV, Part IV.(i) and (iii), Part IV.D.1, Part IV.D.2.a.(1), Part IV.D.2.a.(2), Part IV.D.2.a.(3), Part IV.D.2.c.(2), Part IV.D.4, and Part V.L of the Permit.

### **III. Stipulations and Findings**

31. 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. § 22.18(b), this Consent Agreement and Final Order (“CA/FO”) will conclude this matter.

32. 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.

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

34. 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.

35. 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.

36. 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.

37. 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**

38. 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, EPA has determined that Sixteen Thousand Dollars (\$16,000) is an appropriate civil penalty to settle this action.

39. 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  
Cincinnati Accounting Operations  
Mellon Lock Box 371099M  
Pittsburgh, PA 15251-7099

40. 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 Management Division  
Water Programs Enforcement Branch  
Gulf Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960.

41. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state or local taxes.

42. 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 thirty (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.

43. 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**

44. 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.

38. 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.

39. 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.



40. 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.

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

42. 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.

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

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

For Complainant:

Paul Schwartz  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9576.

For Respondent:

Tommy Craig, Esq.  
Law Offices of Wm. Thomas Craig  
1144 College Avenue  
Post Office Box 1587  
Covington, Georgia 30015  
(770) 786-1320

45. 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.


46. 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.

**VI. Effective Date**

47. 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:

  
\_\_\_\_\_  
James D. Giattina, Director  
Water Management Division  
U.S. EPA, Region 4

Date: 6/14/07

For RESPONDENT:

Signature:   
\_\_\_\_\_  
Name: Peter J. Calabro  
\_\_\_\_\_  
Title: MANAGING MEMBER  
\_\_\_\_\_

Date: 5-24-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
SANDERS SQUARE, LLC., )  
 )  
 )  
 )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

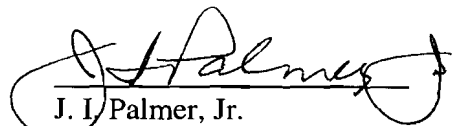
Docket No. CWA-04-2006-4537  
CONSENT AGREEMENT AND  
FINAL ORDER

**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: JUL 12 2007

  
J. I. Palmer, Jr.  
Regional Administrator

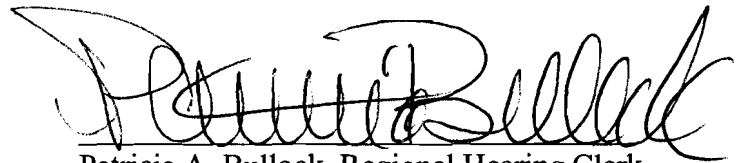
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Sanders Square, LLC, Cumming, Georgia**, Docket No. CWA-04-2006-4537 (filed with the Regional Hearing Clerk on **JUL 13 2007**, 2007) was served on **JUL 13 2007**, 2007, in the manner specified to each of the persons listed below.

**By hand-delivery:** Mr. Paul Schwartz  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**By certified mail,  
return receipt requested:** Mr. Tommy Craig, Esq.  
Law Offices of Wm. Thomas Craig  
1144 College Ave.  
P.O. Box 1587  
Covington, GA 30015

Mr. James A. Sommerville, Chief  
Program Coordination Branch  
Georgia Environmental Protection Division  
2 Martin Luther King Jr. Drive, S.E.  
East Floyd Tower, Suite 1452  
Atlanta, GA 30334-9000



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