



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 12 2011

CERTIFIED MAIL 70102780000182160157
RETURN RECEIPT REQUESTED

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

Re: Consent Agreement and Final Order No. CWA-04-2011-4506(b)
Marion Retail Investments, LLC
Grandview Station
Marion, North Carolina

Dear Mr. Pouncey:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, 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 Maurice Horsey at (404) 562-9764.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz". The signature is fluid and cursive.

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

Enclosure

cc: Coleen H. Sullins, Director, Division of Water Quality
North Carolina Department of Natural Resources
James D. Simons, Division of Land Resources

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HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
MARION RETAIL INVESTMENTS, LLC)	FINAL ORDER
GRANDVIEW STATION)	
MARION, NORTH CAROLINA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2011-4506(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 ("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, Marion Retail Investments, LLC ("Respondent"), is a Limited Liability Corporation (LLC) formed under the laws of the State of South 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 Grandview Station ("Development") located at the northeast corner of I-40 and Sugar Hill Road, in Marion, 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 stormwater, 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. 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 Permit was effective January 2, 2010 and expires on August 2, 2011.

8. The NCDENR Division of Land Resources, Land Quality Section or an approved local program, in this case the NCDENR, 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 approval of coverage under the Permit upon submission and approval of an Erosion and Sedimentation Control Plan ("Plan") prior to commencement of construction.

9. On March 5, 2010, Respondent submitted a Plan to the NCDENR seeking approval of the Plan and coverage under the NCDENR Permit for its Development. The NCDENR approved the Plan and sent Respondent its approval along with a copy of the Permit, with Permit coverage commencing on May 4, 2010, the date that the Plan was approved.

10. Part I.B.6 of the Permit requires a record of inspections be kept which includes details of each inspection, including evidence of stormwater pollution, an indication of visible sediment leaving the site and actions taken, as well as the date of such actions, to correct/prevent sedimentation. If visible sedimentation is found outside of the site limits, the inspection records must include an explanation as to the actions taken to control future releases, actions taken to clean up or stabilize the sediment that has left the site limits, and the date of actions taken. If the discharge results in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions.

11. Part I.C.1 of the Permit requires compliance with Final Limitations and Controls once disturbance has begun on the site until completion of construction or development and establishment of a permanent groundcover.

12. Part I.C.2 of the Permit requires the Permittee to provide operation and maintenance necessary to operate stormwater and all erosion and sedimentation control measures at optimum efficiency.

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

14. 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 be taken.

15. Part II.C.1 of the Permit requires the Permittee to properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit.

16. On September 28, 2010, representatives of Complainant, in conjunction with NCDENR, 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 Code of Federal Regulations ("C.F.R.") § 122.26, and the Permit.

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

18. During the CSWEI, Complainant observed the following:

- A. The following erosion control operation and maintenance issues were noted: (1) The ditch along the construction road had rill erosion along the slopes; (2) Pipe slope drains were not installed properly in a ditch between sediment basin #2 and #3; and (3) The check dams in the drainage ditches were more than half full of sediment. Some areas on the south side of the site were very wet and muddy; silt fencing and hay bales did not prevent sediment from tracking off site.
- B. The slopes on sediment basin #3 were not stabilized as required by Part I.C.1 and Part II.B.2 of the Permit. The lack of stabilization permitted erosion gullies on the slopes of sediment basin #3.
- C. Respondent failed to include notice of off-site sedimentation in its inspection report for September 27, 2010, as required by Part I.B.6 of the Permit. Complainant's CSWEI discovered sediment deposited in the unnamed tributary to North Muddy Creek. A discharge of sediment into the receiving stream is prohibited by Part I.C.1, Part II.B.1, and Part II.B.2 of the Permit.

19. Therefore, Complainant contends that 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.

20. Respondent has undertaken corrective actions which addressed the conditions noted above.

III. Stipulations and Findings

21. 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.

22. 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.

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

24. 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.

25. 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.

26. Complainant 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 Complainant.

27. 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

28. 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, Complainant has determined that Nine Thousand Dollars (\$9,000.00) is an appropriate civil penalty to settle this action.

29. 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

30. 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
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

32. 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

33. 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 COMPLAINANT.

34. 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.

35. 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.

36. 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.

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

38. 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.

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

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

For Complainant:

Rolando E. Bascumbe
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9545

For Respondent:

Gerald L. Pouncey, Jr.
Morris, Manning & Martin
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326-1044
(404) 504-7738

41. 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.

42. 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

43. 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:

Marion Retail Investments, LLC
Grandview Station

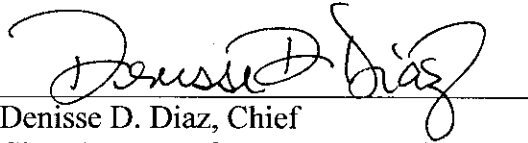
By *W. H. P. Jr.* *Manager*

NAME: *W. H. P. Jr.*

TITLE: *Executive Vice Pres. Ltr*

Date: *8/2/11*

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

A handwritten signature in black ink, appearing to read "Denisse D. Diaz", written over a horizontal line.

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

Date: 9/22/11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
MARION RETAIL INVESTMENTS, LLC)	FINAL ORDER
GRANDVIEW STATION)	
MARION, NORTH CAROLINA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2011-4506(b)
<hr/>)	

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: Sept. 22 2011



Susan B. Schub
Regional Judicial Officer

Docket No. CWA 04-2011-4506(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Grandview Station, **Docket No. CWA-04-2011-4506(b)** (filed with the Regional Hearing Clerk on 9/22, 2011, was served on 9/22, 2011, in the manner specified to each of the persons listed below.

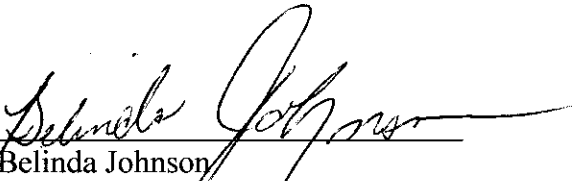
By hand-delivery:

Rolando Bascumbe
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

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



Belinda Johnson
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9686