



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 19 2009

CERTIFIED MAIL 7008 2810 0000 4316 9263
RETURN RECEIPT REQUESTED

Mr. Curtis Harper
Managing Member
Savannah Pointe Properties, LLC
2236 Cahaba Valley Drive, Suite 100
Birmingham, Alabama 35242

Re: Consent Agreement and Final Order
Docket No. CWA-04-2009-4523(b)
NPDES Permit No. ALR167283
Savannah Pointe II
Chelsea, Alabama

Dear Mr. Harper:

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 IV. Payment.

Should you have any questions or problems, please contact Mr. Don Joe at (404) 562-9751.

Sincerely,



Douglas F. Mundrick, P.E.
Chief, Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Alabama Department of Environmental Management

Internet Address (URL) • <http://www.epa.gov>

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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 storm water, into navigable waters subject to specific terms and conditions. Pursuant to Section 402(b) of the CWA, EPA has granted the State of Alabama, through the Department of Environmental Management ("ADEM"), approval to administer the NPDES program.

7. ADEM issued Administrative Code Chapter 335-6-12, *National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities*, ("Permit Regulations"), in accordance with Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 and 22-22A-16 et seq., as amended, effective March 1, 2003, and revised on September 19, 2006. Regulated facilities must submit a Notice of Registration ("NOR") requesting coverage under the Permit Regulations, and must submit an NOR each year thereafter to maintain coverage unless another length of time (not to exceed five (5) years has been approved by ADEM. The Permit Regulations also require that a Construction Best Management Plan ("CBMPP"), designed to minimize pollutant discharges in storm water runoff to the maximum extent practicable during land disturbance activities, be submitted, fully implemented and effectively maintained.

8. The ADEM Water Division is responsible for the approval of coverage under the Permit Regulations, upon submission of the NOR and CBMPP.

9. On March 20, 2007, Respondent submitted to ADEM an NOR and CBMPP requesting coverage for its Development. A Notice of Coverage was sent to Respondent with an effective date of March 21, 2007 and an expiration date of April 7, 2008.

10. Part 335-6-12-.06(3) of the Permit Regulations requires the Operator to control, suspend, or cease construction or discharge upon reduction in effectiveness, loss or failure of a treatment facility or Best Management Practices ("BMPs") until the construction BMP/control is restored or an effective alternative BMP or method of effective treatment is provided.

11. Part 335-6-12-.06(4) of the Permit Regulations requires the Operator to take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge(s).

12. Part 335-6-12-.10(4)(b)3 of the Permit Regulations requires the Operator to request modification of registration by submission of a revised NOR whenever there is a significant change in the CBMPP or BMPs.

13. Part 335-6-12-.21(2)(b)2 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including the minimization of surface area that is disturbed at any one time; and to minimize introduction and facilitate removal of sediment, nutrients, and other pollutants in the storm water.

14. Part 335-6-12-.21(2)(b)3 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including the proper cleanup/removal or effective stabilization of sediment deposited off-site, and effective remediation of sediment or other pollutant in-stream impacts to the maximum extent practicable.

15. Part 335-6-12-.21(2)(b)5 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including measures to be implemented on all areas not undergoing active disturbance or active construction and progressive construction for longer than thirteen (13) days to prevent/minimize erosion and ensure timely temporary vegetative cover, and permanent re-vegetation or cover of all disturbed areas when disturbance is complete.

16. Part 335-6-12-.21(2)(b)13 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including the management of any overland flow not otherwise controlled by effective BMPs; trapping of any sediment in channelized flow to the extent possible; staging construction to limit bare areas subject to erosion; protection of down slope drainage inlets where they occur; minimization of offsite sediment/mud tracking by vehicles or equipment; stabilization of drainage ways or channels; and installation of permanent stabilization practices as soon as possible after final grading.

17. Part 335-6-12-.21(3) of the Permit Regulations requires the Operator to implement additional effective structural and nonstructural BMPs, as necessary, to protect water quality and update the CBMPP.

18. Part 335-6-12-.21(4) of the Permit Regulations requires that BMPs be designed, implemented, and regularly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected/predicted during construction disturbance, and during extended periods of adverse weather and seasonable conditions.

19. Part 335-6-12-.21(5)(a) of the Permit Regulations requires the Operator to ensure that BMPs are fully implemented and regularly maintained.

20. Part 335-6-12-.21(5)(b) of the Permit Regulations requires the Operator to ensure that BMPs are implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes.

21. Part 335-6-12-.21(6) of the Permit Regulations requires the Operator to remediate any off-site deposition or discharge of sediment and other pollutants, and if required, implement measures to remediate any impacts to the maximum extent practicable.

22. Part 335-6-12-.21(8) of the Permit Regulations requires the Operator to ensure that BMPs shall not be installed in a surface water unless authorized.

23. Part 335-6-12-.21(10) of the Permit Regulations requires that in-stream or within-bank sediment storage traps or disposition areas, or other sediment storage or detention BMPs in surface waters, are not installed or used.

24. Part 335-6-12-.21(11)(c) of the Permit Regulations requires the Operator to ensure that effective BMPs are implemented as necessary to minimize downstream turbidity.

25. Part 335-6-12-.26(2) of the Permit Regulations requires the Operator to document and ensure that effective BMPs are properly designed, implemented, and consistently maintained to prevent/minimize discharges of pollutants in storm water runoff.

26. Part 335-6-12-.35(1) of the Permit Regulations requires the Operator to properly operate and maintain all BMPs, facilities, systems of treatment and control, and associated appurtenances which are installed or used to achieve compliance.

27. Part 335-6-12-.35(10)(a) of the Permit Regulations requires the Operator to take prompt steps to mitigate and prevent or minimize any adverse impact resulting from noncompliance with any requirements of the Permit Regulations; determine the nature and impact of the non-complying discharge; and remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or storm water conveyance.

28. Part 335-6-12-.35(11)(a) of the Permit Regulations requires the Operator to take all reasonable steps, including cessation of construction, building production or other activities, to prevent or minimize any violation of the Permit Regulations, or to prevent or minimize any adverse impacts.

28. On April 2, 2008, representatives of EPA, in conjunction with ADEM, performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondent's 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 ADEM Permit Regulations.

29. As a result of the CSWEI, EPA 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.

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

- A. Savannah Pointe Properties, LLC failed to install silt fencing or failed to provide adequate maintenance through the removal of sediment or re-installation of silt fencing as required by Part 335-6-12-.06(3), Part 335-6-12-.21(3), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.21(5)(b), Part 335-6-12-.21(11)(c), Part 335-6-12-.26(2), Part 335-6-12-.35(1), and Part 335-6-12-.35(I1) of the Permit Regulations.
- B. Savannah Pointe Properties, LLC failed to provide maintenance and repair to the outfall structure in sedimentation pond #1. Storm water had discharged and filled the rip rap check ditch in the pond causing sediment to leave the pond and be discharged into Spring Creek. Failure to provide the maintenance and repair is in violation of Part 335-6-12-.06(3), Part 335-6-12-.21(3), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.21(5)(b), Part 335-6-12-.21(11)(b), Part 335-6-12-.26(2), Part 335-6-12-.35(1), Part 335-6-12-.35(11) and Part 335-6-12-.10(4)(b)3 of the Permit Regulations.
- C. Savannah Pointe Properties, LLC constructed sedimentation pond #1 in Spring Creek. Construction of BMP structures in a live stream are prohibited pursuant to Part 335-6-12-.21(8), and Part 335-6-12-.21(10) of the Permit Regulations.
- D. Savannah Pointe Properties, LLC needed to re-evaluate the design of its sedimentation pond outfalls, the necessity of additional sediment traps prior to the ponds, and the addition of diversion structures to ease the amount of storm water being discharged from the site.
- E. Savannah Pointe Properties, LLC failed to provide stabilization of all sedimentation basin banks as well as other areas of the site where construction has temporarily or permanently ceased as required by Part 335-6-12-.21(2)(b)5, Part 335-6-12-.21(2)(b)13, Part 335-6-12-.21(3), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.21(5)(b),

Part 335-6-12-.26(2), Part 335-6-12-.35(1), and Part 335-6-12-.35(11) of the Permit Regulations.

- F. Savannah Pointe Properties, LLC discharged sediments off the limits of the site and into the water feature due to the lack of BMP maintenance and installation, lack of stabilization, and the installation of a BMP in the live stream in violations of Part 335-6-12-.06(4), Part 335-6-12-.21(2)(b)2, Part 335-6-12-.21(2)(b)3, Part 335-6-12-.21(6), Part 335-6-12-.35(10)(a) of the Permit Regulations.

31. 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 ADEM Permit Regulations.

III. Stipulations and Findings

32. 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.

33. 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.

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

35. 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.

36. 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.

37. 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.

38. 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

39. 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 Twenty Thousand Dollars (\$20,000.00) is an appropriate civil penalty to settle this action.

40. 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 979770
St. Louis, Missouri 63197-9000

41 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

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
West NPDES Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

43. 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.

44. 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

45. 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.

46. 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.

47. 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.

48. 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.

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

50. 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.

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

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

For Complainant:

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
(404) 562-9530

For Respondent:

Curtis Harper
Savannah Pointe Properties, LLC
236 Cahaba Valley Drive, Suite 100
Birmingham, Alabama 35242

54. 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 Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

55. 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:

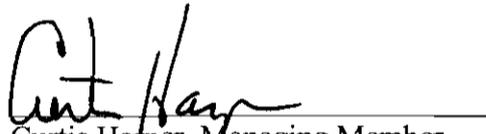
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Douglas E. Mundrick, P.E.
Chief, Clean Water Enforcement Branch
Water Protection Division

Date: 7/9/09

For RESPONDENT, SAVANNAH POINTE PROPERTIES, LLC:



Curtis Harper, Managing Member

Date: 10/22/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
) CONSENT AGREEMENT AND
) FINAL ORDER
SAVANNAH POINTE PROPERTIES, LLC)
SAVANNAH POINTE II)
CHELSEA, ALABAMA)
)
RESPONDENT.) DOCKET NO. CWA-04-2009-4523(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)(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: August 19, 2009

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of _____, Docket No. **CWA-04-2009-4523(b)** (filed with the Regional Hearing Clerk on AUG 19 2009, 2009, was served on AUG 19 2009, 2009, in the manner specified to each of the persons listed below.

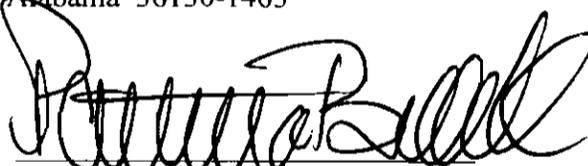
By hand-delivery:

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:

Curtis Harper
Savannah Pointe Properties, LLC
236 Cahaba Valley Drive, Suite 100
Birmingham, Alabama 35242

Vernon H. Crockett
Chief, NPDES Enforcement Branch
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, Alabama 36130-1463



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

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: Savannah Pointe Properties, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 20,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2009-4523(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: Water Protection Division

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) |