

December 19, 2008

United States Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960 CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Attn: Mr. Douglas F. Mundtich, P.E.

Re: Administrative Complaint and Notice of
Proposed Penalty Assessment
Docket No. CWA-04-2008-4535
Mitchner Hills Subdivision
Clayton, N.C.

RECEIVED
EPA REGION IV
2009 JAN 13 AM 11:28
HEARING CLERK

Dear Mr. Mundtich,

Listed below in numerical order, but not necessarily consecutive numerical order, is/are our response(s) to the various items addressed by the above referenced complaint. Items not being responded to are accepted as written.

9) Respondent owned a portion of the construction site known as Mitchner Hills Subdivision. Lots 1 through 33 and Lots 120 through 144 were purchased from Respondent by Mitchner Hills Developers, LLC, on April 10 and April 20,

2006; and, to the best of our knowledge, have subsequently been sold to third parties.

10) NCDENR approved the erosion control plans for the Mitchner Hills subdivision project (sheets 1, 5, ECI and EC2) in November ~~July~~, 2006.

23) With regard to amending the erosion control plans for the Mitchner Hills subdivision project, we hadn't planned to amend them. The various erosion control devices, diversion ditches, silt fencing, etc., utilized at the site will simply be eliminated as the need for them ceases to exist.

With regard to submitting a new Financial Responsibility/Ownership Form to the North Carolina Division of Land Quality, it is our understanding that this form has to be submitted by the new owner(s). Though we have asked them to do this, we cannot force them to do so.

27) something is wrong. If the dates mentioned in this item are correct, the inspections resulting in the Notice of Violation dated October 2, 2006, and the Notice of Violation, per se, both took place before we had an approved erosion control plan for this project.

28) See comments in the next above item that pertain to "inspections resulting in the Notice of Violation dated October 2, 2006".

31) To the best of our knowledge, shortly after our letter of June 23, 2007, to Mr. Kenneth Kwan, U. S. Environmental Protection Agency, Respondent had corrected all deficiencies pertaining to the erosion control work for the Mitchner Hills subdivision project. It should be noted that the copies of the letters (three each) and deeds (two each) attached to our letter of June 23, 2007, are a part of said letter.

33) At this point in time we were trying to determine to what extent Mitchner Hills Developers, LLC, were participating in the resolution of Administrative Order # CWA 04-2007-4767. The only thing we knew for sure on April 8, 2008, was that, including engineering fees, we had spent well over \$100,000⁰⁰ correcting deficiencies in the erosion control work at the Mitchner Hills subdivision project; and responsibility for these deficiencies clearly belongs to Mitchner Hills Developers. We say "clearly" because it only takes a quick trip to the jobsite after a rain event to see that the "lion's share" of the erosion control problems at the jobsite were/are ~~was/is~~ due to runoff from property ~~is~~ owned by parties other than Respondent.

34) We have no record of receiving this letter; and would appreciate your sending us a copy of same.

36) Miranda Jenkins is my fifteen year old grand-daughter; and she does not remember signing a receipt for a letter from anyone. However, she is a teenager; and I cannot state unequivocally that she didn't sign for the letter under discussion. On the other hand, I can assure you that I have not seen such a letter (I'm not in the habit of ignoring certified mail).

With the above in mind, it appears that the best course of action for us (BBS Builders + Development Co., LLC) at this point in time is to request an Informal Settlement Conference. There are just too many variables pertaining to Administrative Order # CWA 04-2007-4767 for us to do otherwise.

The main unresolved issue is, of course, the matter of who is responsible for the corrective work that has been done to date and needs to be done in the future to bring

the Mitchner Hills subdivision jobsite into full compliance with the erosion control plans approved for the project; and who is responsible for the penalties pertaining thereto. This issue has been a "stumbling block" for us since receipt of the first Notice of Violation. We have absolutely no control over the current owners of Lots 1 through 33 and Lots 120 through 144, be it Mitchner Hills Developers, LLC, and/or individual home owners - owners of the property causing 90 percent, plus, of the erosion control problems we have encountered/are encountering at the jobsite.

Speaking frankly, we suspect that the current owners of Lots 1 through 33 and Lots 120 through 144 are going to continue their "hands off" policy with regard to the erosion control problems at said lots. These lots are, to coin an old phrase, "in a mess"; and the scope of work needed to correct the situation goes far beyond erosion control work. The current owners of these lots are not going to accept responsibility for the condition the lots are in unless they are forced to do so; and there is no way we can force them to do anything.


Also, continuing to speak frankly, we feel that the reason the current owners of the lots mentioned in the preceding paragraph have not been made a party to the Notice of Violations we have been issued is that you and the NCDENR feel we're an "easier target" than Mitchner Hills Developers and a group of individual home owners. If you think through the subject matter of this letter honestly, I'm reasonably sure that you will agree that it appears that BBS Builders + Development Co., LLC, is being held accountable, in large part, for the shortcomings of others.

Complicating any additional erosion control work that has to be done at the Mitchner Hills subdivision project, or payment of any penalties associated with said work, is that James V. McLamb has some very serious financial problems - problems that may well force him into bankruptcy. As a matter of fact, it is my understanding that he has already "shut down" the Benson Building Supply, Inc., portion of his operations; and will be "shutting down" other portions of his operations in the near future.

Be all of the above as it may, we are hereby requesting an Informal Settlement Conference to, hopefully, resolve the matter of Administrative Order # CWA 04-2007-4767. This makes the request we alluded to in the fifth paragraph above this paragraph official. In an effort to make sure we have notified all the appropriate parties of our request for an Informal Settlement Conference, we are sending copies of this letter to the following people:

Regional Hearing Clerk (two copies)
U.S. Environmental Protection Agency, Region 4

Susan Hansen
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4

Yours, Very Truly,

S. P. Lucas

cc: Mr. William C. Credle
Credle Engineering Company, Inc.

Mr. James V. McLamb
BBS Builders & Development Company, LLC

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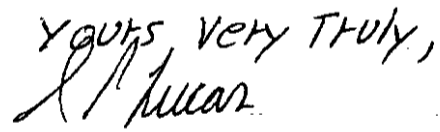
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