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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                            |   |                              |
|----------------------------|---|------------------------------|
| In the Matter of:          | ) |                              |
|                            | ) | DOCKET NO. CWA-10-2007-0039  |
|                            | ) |                              |
| HALLMARK INVESTMENTS, LLC, | ) | <b>CONSENT AGREEMENT AND</b> |
|                            | ) | <b>FINAL ORDER</b>           |
|                            | ) |                              |
| Respondent.                | ) |                              |

**I. AUTHORITIES**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to enter into the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Hallmark Investments, LLC ("Hallmark") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.



1 clearing, grading, and excavating that result in land disturbance of equal or greater than one acre  
2 and less than five acres.”

3 3.4. In July of 2003, EPA reissued the NPDES General Permit for Storm Water  
4 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the CWA, 33  
5 U.S.C. § 1342. The CGP became effective on July 1, 2003 and authorizes discharges of storm  
6 water associated with construction activities. The CGP’s coverage extends to all facilities in the  
7 State of Alaska and requires permittees to comply with the conditions and requirements set forth  
8 in the CGP.

9 3.5. To obtain coverage for storm water discharges from a construction site under the  
10 CGP, an operator must first “prepare and submit a complete and accurate Notice of Intent.” CGP  
11 at Part 2. An “operator” is defined as both (1) “[t]he party [who] has operational control over  
12 construction plans and specifications ...,” and (2) “[t]he party [who] has day-to-day operational  
13 control of those activities at a project which are necessary to ensure compliance with a [storm  
14 water pollution prevention plan] for the site or other permit conditions.” CGP at Appendix A.

15 3.6. Section 2.3.C of the CGP requires operators of unpermitted ongoing construction  
16 projects to apply for coverage under the CGP within ninety (90) days of the issuance date of the  
17 CGP and to comply with an Interim Storm Water Pollution Prevention Plan (“SWPPP”).

18 3.7. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the  
19 owner or operator of any point source to provide such information as may be reasonably required  
20 in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a), EPA has  
21 promulgated NPDES permit application requirements. Among these application requirements  
22 are:

- 23 • The requirement set forth in 40 C.F.R. § 122.21(a)(1) that “[a]ny person  
24 who discharges or proposes to discharge pollutants ... must submit a  
25 complete application to [EPA],”

- 1 • The requirement set forth in 40 C.F.R. § 122.26(c)(1) that “[d]ischarges of  
2 storm water associated with industrial activity and with small construction  
3 activity are required to apply for an individual permit or seek coverage  
4 under a promulgated storm water general permit,” and
- 5 • The requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated  
6 dischargers of construction storm water submit an NPDES permit  
7 application or a Notice of Intent to apply for coverage under an NPDES  
8 general permit at least ninety (90) days before the date on which  
9 construction is to commence unless an applicable NPDES general permit  
10 specifies a different submittal date.

11 3.8. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess  
12 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33  
13 U.S.C. § 1311 or 1318. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), also authorizes  
14 EPA to assess administrative penalties against any person who has violated any permit condition  
15 or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

16 3.9. Hallmark is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C.  
17 § 1362(5).

18 3.10. Hallmark is the owner of the Wooded Acres Condominiums Phase 2 construction  
19 site (“Site”). As the owner of the Site, Hallmark has operational control over the construction  
20 plans and specifications at the Site. Further, Hallmark has day-to-day operational control of  
21 those activities at the Site necessary to ensure compliance with the CGP. As such, Hallmark is  
22 an operator under the CGP.

23 3.11. The Site consists of approximately 4.25 acres of real property located on 59th  
24 Avenue and Dow Place in Anchorage, Alaska.

25 3.12. The receiving water for any storm water discharges from the Site is the  
Anchorage municipal separate storm sewer system (“MS4”). The Anchorage MS4 discharges to  
South Fork Little Campbell Creek which flows to Little Campbell Creek. Little Campbell Creek  
flows to Cook Inlet. South Fork Little Campbell Creek, Little Campbell Creek, and Cook Inlet

1 are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are  
2 "waters of the United States" as defined in 40 C.F.R. § 122.2.

3 3.13. In or about the summer of 2003, Respondents began construction activities that  
4 resulted in the clearing, grading, and/or excavation of more than one acre of land at the Site.  
5 EPA conducted an inspection of the Site on May 4, 2005.

6 3.14. At the time of the Site inspection, Hallmark had not received coverage under the  
7 CGP. Hallmark did not obtain coverage under the CGP during the time it was an operator on the  
8 Site.

9 3.15. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an  
10 administrative penalty against any person who violates Section 308 of the CWA, 33 U.S.C.  
11 § 1318. Consequently, under CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), Hallmark  
12 is liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000  
13 per day for each day during which a violation continues, up to a maximum amount of \$157,500.

#### 14 **IV. CONSENT AGREEMENT**

15 4.1. Hallmark admits the jurisdictional allegations contained in Part III of this CAFO.

16 4.2. Hallmark neither admits nor denies the specific factual allegations contained in  
17 Part III of this CAFO.

18 4.3. As required under CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has  
19 taken into account the nature, circumstances, extent, and gravity of the alleged violations as well  
20 as Hallmark's economic benefit of noncompliance, ability to pay, and other relevant factors.  
21 After considering all of these factors, EPA has determined and Hallmark agrees that an  
22 appropriate penalty to settle this action is in the amount of Eight Thousand Five Hundred Dollars  
23 (\$8,500.00).

1           4.4.   Hallmark consents to the issuance of the Final Order set forth in Part V, below,  
2 and agrees to pay the total civil penalty set forth in Paragraph 4.3, above, within thirty (30) days  
3 of the effective date of this Final Order.

4           4.5.   Payment under this CAFO shall be made by cashier's check or certified check,  
5 payable to the order of "Treasurer, United States of America" and delivered to the following  
6 address:

7                           U.S. Environmental Protection Agency  
8                           Region 10  
9                           P.O. Box 371099M  
                          Pittsburgh, PA 15251

10 Hallmark shall note on the check the title and docket number of this action.

11           4.6.   Hallmark shall serve photocopies of the check described in Paragraph 4.5, above,  
12 on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and Enforcement  
13 at the following addresses:

14                           Regional Hearing Clerk  
15                           U.S. Environmental Protection Agency  
                          Region 10  
16                           1200 Sixth Avenue, ORC-158  
                          Seattle, WA 98101

17                           Office of Compliance and Enforcement  
18                           Attn: Chae Park  
19                           U.S. Environmental Protection Agency  
                          Region 10  
20                           1200 Sixth Avenue, OCE-133  
                          Seattle, WA 98101

21           4.7.   If Hallmark fails to pay the penalty assessed by this CAFO in full by the due date  
22 set forth in Paragraph 4.3, above, Hallmark may be subject to a civil action to collect the  
23 assessed penalty under the CWA, together with interest, fees, costs, and additional penalties  
24  
25

1 described below. In any collection action, the validity, amount, and appropriateness of the  
2 penalty shall not be subject to review.

3 4.8. If Hallmark fails to pay any portion of the penalty assessed by this CAFO in full  
4 by the due date set forth in Paragraph 4.4, above, Hallmark shall be responsible for payment of  
5 the amounts described below:

6 4.8.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any  
7 unpaid portion of the assessed penalty shall bear interest at a rate established by the  
8 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the  
9 Final Order set forth in Part V, below, provided, however, that no interest shall be  
10 payable on any portion of the assessed penalty that is paid within thirty (30) days of the  
11 effective date of the Final Order.

12 4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA  
13 Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Hallmark fails to pay on a timely basis the  
14 amount of the penalty set forth in Paragraph 4.3., above, Hallmark shall pay (in addition  
15 to any assessed penalty and interest) attorneys fees and costs for collection proceedings  
16 and a quarterly nonpayment penalty for each quarter during which such failure to pay  
17 persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%)  
18 of the aggregate amount of Hallmark's penalties and nonpayment penalties which are  
19 unpaid as of the beginning of such quarter.

20 4.9. The penalty described in Paragraph 4.3, above, including any additional costs  
21 incurred under Paragraph 4.8, above, represents an administrative civil penalty assessed by EPA  
22 and shall not be deductible for purposes of federal taxes.

1 4.10. The undersigned representative of Hallmark certifies that he or she is fully  
2 authorized to enter into the terms and conditions of this CAFO and to bind Hallmark to this  
3 document.

4 4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own  
5 costs in bringing or defending this action.

6 4.12. Hallmark expressly waives any rights to contest the allegations and to appeal the  
7 Final Order set forth in Part V, below.

8 4.13. The provisions of this CAFO shall bind Hallmark and its officers, directors,  
9 agents, servants, employees, successors, and assigns.

10 4.14. The above provisions are STIPULATED AND AGREED upon by Hallmark and  
11 EPA.

12  
13 DATED:

HALLMARK INVESTMENTS, LLC:

14  
15 Dec 15, 06

14  
15 

16 STEVE STRAWN  
17 General Manager  
18 For Respondent

19 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

20  
21 12/19/06

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22 COURTNEY J. HAMAMOTO  
23 Assistant Regional Counsel  
24 For Complainant  
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V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Hallmark is hereby ordered to comply with the foregoing terms of the settlement.

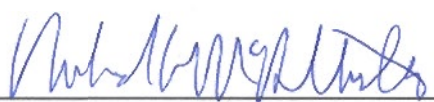
5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Hallmark's obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued thereunder.

5.3. In accordance with CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given an opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Hallmark.

5.4. Pursuant to CWA Section 309(g)(4)(A), 33 U.S.C. § 1319(g)(4)(A), EPA has published public notice of its intent to assess an administrative penalty against Hallmark and invited public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petitions to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

1 SO ORDERED this 5<sup>th</sup> day of February, 2008.  
2  
3

4 

5 RICHARD G. McALLISTER  
6 Regional Judicial Officer  
7 U.S. Environmental Protection Agency  
8 Region 10  
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Hallmark Investments, LLC, DOCKET NO.: CWA-10-2007-00039** was filed with the Regional Hearing Clerk on February 5, 2007.

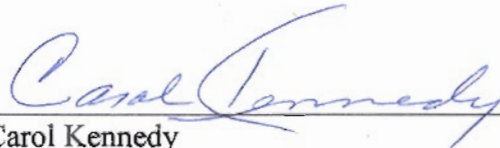
On February 06, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on February 06, 2007, to:

Hallmark Investments, LLC  
3705 Arctic Blvd #2318  
Anchorage, AK 99503

DATED this 6<sup>th</sup> day of February 2007.



Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10