



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 15 2017

CERTIFIED MAIL 7007 2680 0000 3272 1924
RETURN RECEIPT REQUESTED

Adam G. Sowatzka, Partner
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309-3521

Re: Consent Agreement and Final Order
Docket No. CWA-04-2017-4504(b)
Lennar Homes, LLC
Riverstrand
Bradenton, Florida

Dear Mr. Sowatzka:

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. Mark Robertson at (404) 562-9639.

Sincerely,

A handwritten signature in blue ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
NPDES Permitting and Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Benjamin Melnick
Florida Department of Environmental Protection

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
LENNAR HOMES, LLC)	FINAL ORDER
SOUTHWEST FLORIDA DIVISION)	
RIVERSTRAND)	
BRADENTON, FL)	
MANATEE COUNTY)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2017-4504(b)
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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. 40,176 (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. 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, of the EPA, Region 4, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. 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.

4. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the 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. The EPA has granted the State of Florida, through the Florida Department of Environmental Protection (“FDEP”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

5. At all times relevant to this action, Lennar Homes, LLC., (“Respondent”) is a Florida limited liability corporation, which is a wholly-owned subsidiary of Lennar Corporation, a corporation formed under the laws of the State of Delaware, and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

6. At all times relevant to this action, the Respondent owned and/or operated a construction site known as Riverstrand (“Development”) located at 8411 Port Harbour Highway, in Bradenton, Manatee County, Florida.

7. FDEP issued the NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities (“Permit”), under the provisions of Section 403.0885, Florida Statutes, and Chapter 62-621 of the Florida Administrative Code pursuant to the Department’s federally-approved NPDES stormwater regulatory program. The Permit was effective February 17, 2009. Coverage under the Permit is obtained by submitting a Notice of Intent (“NOI”) to FDEP.

8. On September 21, 2012, Respondent submitted an NOI to FDEP requesting coverage under the Permit at the Development. A verification of permit coverage letter was sent to the Respondent with a NPDES no. FLR10MB81. The permit authorization became effective on September 30, 2012, and will expire on September 29, 2017, and requires Respondent to comply with all provisions of the Permit.

9. Part V.A of the Permit requires that a Stormwater Pollution Prevention Plan (“SWPPP”) be developed and implemented for each construction site covered by this Permit. Facilities must implement the provisions of the plan including the best management practices as a condition of the Permit.

10. Part V.D.1 of the Permit requires that the SWPPP shall provide a description of pollutant sources and other information as indicated, including a map as required by Part V.D.1.e.

11. Part V.D.2.a.(1) of the Permit requires that portions of the site where construction activities have temporarily or permanently ceased shall be stabilized as soon as practicable, but in no case more than 7 days after the activities have ceased.

12. Part V.D.2.a(2) of the Permit requires the Permittee to provide a description of structural best management practices (“BMPs”) used to retain sediment on-site in the SWPPP.

13. Part V.D.2.a(3)(a) of the Permit requires that sites with a drainage area of 10 or more common disturbed acres install a sediment basin providing at least 3,600 cubic feet of storage per acre drained, or a combination of smaller sediment traps and other BMPs.

14. Part V.D.2.a(3)(c) of the Permit provides that areas that will be used for permanent stormwater infiltration should not be used for temporary sediment basins unless appropriate measures are taken to assure removal of accumulated fine sediments. Under Part V.D.2.b of the Permit, each SWPPP shall include a description of permanent stormwater management controls that will be installed to control pollutants during construction and after construction operations have been completed. Part I.A.3 of the Permit excludes the authorization to alter pre-existing stormwater management systems.

15. Part V.D.4.b of the Permit requires that all maintenance operations needed to assure proper operation of BMPs shall be done in no case later than 7 calendar days following self- inspection.

16. On March 24, 2015, the EPA 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 C.F.R. § 122.26, and the Permit.

17. As a result of the CSWEI, the EPA has determined that stormwater associated with construction 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 into Cypress Strand Creek, a traditional navigable water of the United States.

18. Based on the CSWEI and review of additional information, the EPA alleges that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit as follows:

- A. The Respondent failed to document that timely repairs were completed of BMP failures or deficiencies after six different self-inspections, between January 7, 2015, and March 11, 2015.
- B. The Respondent failed to properly document sediment management plans for removal of silt deposited into existing on-site stormwater management ponds.
- C. The Respondent failed to properly stabilize construction areas where construction activities had temporarily or permanently ceased within seven days of cessation.
- D. The Respondent failed to install, and in other locations properly maintain, silt fences, in locations where the SWPPP required fences.
- E. The Respondent failed to include all BMP documentation for specified control measures within the SWPPP.

F. The Respondent failed to include a complete site map which showed the drainage patterns, slopes, and major structural and non-structural controls identified in the plan for the Phase 4 area.

19. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), due to its failure to comply with the Permit.

III. Stipulations and Findings

20. Complainant and the 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.

21. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

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

23. The 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.

24. By signing this CA/FO, the 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. The 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.

25. The 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 the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

26. Complainant and the 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

27. 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, the EPA has determined that seventeen thousand dollars (\$17,000) is an appropriate civil penalty to settle this action.

28. The 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 the 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

29. At the time of payment, the 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

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

31. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the 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

32. This CA/FO shall not relieve the 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 the EPA.

33. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

34. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the 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.

35. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO.

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 the Respondent and its officers, directors, employees, agents, successors and assigns.

38. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

39. Each party shall bear its own costs and attorney's 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 related to this proceeding:

For Complainant:

Ms. Carol Baschon

Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9528

For Respondent:

Adam G. Sowatzka
Partner
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309-3521
(404) 572-3508

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 proposed CA/FO 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 Florida was provided a prior opportunity to consult with Complainant regarding this matter.

43. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

44. 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:

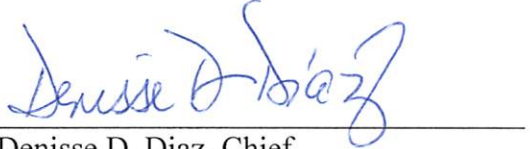
For the RESPONDENT
Lennar Homes LLC:



Darin McMurray
President, Southwest Florida Division

Date: 3/31/17

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:



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

Date: 6/13/17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

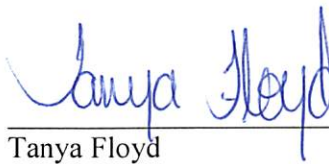
IN THE MATTER OF:)
)
LENNAR HOMES, LLC) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
SOUTHWEST FLORIDA DIVISION)
RIVERSTRAND)
BRADENTON, FL)
MANATEE COUNTY)
)
RESPONDENT.) **DOCKET NO. CWA-04-2017-4504(b)**
_____)

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), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 13, 2017



Tanya Floyd
Regional Judicial Officer

Docket No. CWA-04-2017-4504(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 Lennar Homes, LLC., Docket No. CWA-04-2017-4504(b) (filed with the Regional Hearing Clerk on 6-15, 2017) was served on 6-15, 2017, in the manner specified to each of the persons listed below.

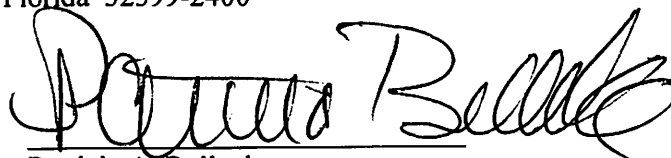
By hand-delivery:

Carol F. Baschon
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Adam G. Sowatzka
Partner
King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309-3521

Benjamin Meinick
Program Administrator, Water Compliance Assurance Program
Florida Department of Environmental Protection
Division of Water Resource Management
2600 Blairstone Rd., MS-3550
Tallahassee, Florida 32399-2400



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511