



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 19 2009

CERTIFIED MAIL 7008 1140 0002 7576 8938
RETURN RECEIPT REQUESTED

Mr. Adam G. Sowatzka
King and Spalding, LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309

Re: Consent Agreement and Final Order
Docket No. CWA-04-2009-4507(b)
Capital City Club, Brookhaven Golf Course
Atlanta, Georgia

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 Ms. Araceli Bonilla at (404) 562-9790.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Georgia Department of Environmental
Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV

2009 MAY 19 AM 11:08

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
CAPITAL CITY CLUB)	FINAL ORDER
CAPITAL CITY CLUB, BROOKHAVEN)	
GOLF COURSE)	
ATLANTA, GEORGIA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2009-4507(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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, EPA, Region 4 ("Complainant").

II. Allegations

3. Capital City Club is an association doing business in the State of Georgia and 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, Capital City Club owned and/or operated a construction site known as Capital City Club, Brookhaven Golf Course ("Development") located at 53 West Brookhaven Drive, Atlanta, Georgia.

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 a 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. EPA has granted the State of Georgia, through the Georgia Environmental Protection Division (“GAEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. GAEPD issued the *Authorization to Discharge Under The National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity For Stand Alone Construction Projects*, Permit No. GAR100001 (“Permit”), in accordance with the Georgia Water Quality Control Act (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964), the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6, and the CWA. The Permit was effective from August 13, 2003 until July 31, 2008, although it was administratively continued until reissued by GAEPD on August 1, 2008. The reissued Permit shall expire on July 31, 2013. Coverage under the Permit is obtained by submitting a Notice of Intent (“NOI”) to GAEPD.

8. The Permit is a Georgia statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, and excavation activities except operations that result in the disturbance equal to or greater than one (1) acre of total land area which are not part of a larger common plan of development or sale.

9. On August 30, 2007, Capital City Club and Medalist Golf, Inc., the general contractor for the project, submitted to GAEPD an NOI requesting coverage under the Permit. On September 30, 2008, Capital City Club and Medalist Golf, Inc. as co-permittees submitted to GAEPD an NOI requesting Permit coverage for the reissued Permit.

10. Part III.C.2 of the Permit states that the Permittee’s failure to properly design, install, or maintain Best Management Practices (“BMPs”) shall constitute a violation of the Permit for each day on which such failure occurs.

11. Part III.C.3 of the Permit states that the Permittee’s discharge of storm water runoff from disturbed areas where BMPs have not been properly designed, installed, and maintained shall constitute a separate violation for each day on which such discharge results in the turbidity of receiving water(s) being increased by more than ten (10) nephelometric turbidity units (“NTU”) for waters classified as trout streams or more than twenty-five (25) NTUs for water supporting warm water fisheries.

12. Part IV of the Permit requires the Permittee to ensure that an Erosion, Sedimentation and Pollution Control Plan (“Plan”) shall be designed, installed, and maintained

for the construction activity covered by this Permit. The Plan must be prepared by a design professional. The Plan must include, as a minimum, BMPs, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation.

13. Part IV(iii) of the Permit requires that the Plan identify all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site or common development. The Plan shall describe and the applicable Permittee shall ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges and assure compliance with the terms and conditions of the Permit. The applicable Permittee must implement and maintain the provisions of the Plan.

14. Part IV.D of the Permit requires that, as a minimum, the Plan include BMPs, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation.

15. Part IV.D.2.b.(2) of the Permit requires the placement of velocity dissipation devices at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

16. Part IV.D.(3).(2) of the Permit requires qualified personnel inspect at least once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater the following: (a) disturbed areas that have not undergone final stabilization; (b) areas used for storage of materials that are exposed to precipitation that have not undergone final stabilization; and (c) structural control measures. Erosion and sediment control measures shall be observed to ensure that they are operating correctly.

17. Part IV.D.(3).(5) of the Permit requires the permittee to complete an inspection report summarizing the scope of each inspection and the name(s) of personnel making each inspection, the date(s) of each inspection, major observations relating to the implementation of the Plan and actions taken to revise the Plan. Such reports shall identify any incidents of non-compliance. Where the report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the Plan and the permit. The report is also required to be signed in accordance with Part V.G. of the permit, and must contain the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

18. Part IV.D.5.d(3)(c) of the Permit provides that if, at the time of sampling performance, BMPs are found to be properly designed, installed and maintained, no further

action is required by the Permittee. If BMPs in any area of the site that discharges to a receiving stream are not properly designed, installed, and maintained, the Permittee shall define and implement corrective action within two (2) business days, and turbidity samples shall be taken from discharges from that area of the site for each subsequent rain event that reaches or exceeds 0.5 inch during normal business hours until the selected turbidity standard is attained, or until post-storm event inspections determine that BMPs are properly designed, installed and maintained.

19. Part V.L of the Permit requires the Permittee to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this Permit and with the required Plans.

20. On February 27, 2008, representatives of EPA performed a Compliance Storm Water Evaluation Inspection (“CSWEI”) at Respondent’s Development to evaluate whether the treatment and disposal of storm water at the Development was in accordance with the Permit.

21. 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.

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

- A. Capital City Club or its contractors failed to properly install, operate, or maintain: a storm drain inlet on the eastern portion of the site, known as “Infall #1”; Sediment Basin “C;” Sediment Basin “J;” a check dam/rock filter dam at the confluence of “Stream E” and the outfall of Brookhaven Lake; and rock outlet protection at the outfall of Brookhaven Lake. These failures resulted in the discharge of pollutants into the unnamed tributary of Nancy Creek and Nancy Creek in violation of Part III.C.2 and Part V.L of the Permit.
- B. Sediment laden storm water runoff was discharged from the Development from the outfall of Brookhaven Lake, as documented by the turbidity readings taken and reported by Capital City Club, on 01/11/08, 02/01/08, 02/18/08, 02/21/08, 02/26/08, 03/04/08, 03/07/08, 03/17/08, 03/20/08, 03/31/08, 04/05/08, 04/12/08, 04/26/08, 04/28/08, 07/13/08, 08/07/08, 08/25/08, and 08/26/08, in violation of Part III.C.3 of the Permit.
- C. Capital City Club or its contractors failed to ensure the proper implementation of the Plan in order to prevent and minimize erosion/sedimentation into the unnamed tributary of Nancy Creek or Nancy Creek in violation of Part IV and Part IV.D of the Permit.

- D. Capital City Club or its contractors failed on numerous occasions to conduct inspections at the frequency and in the manner required by Part IV.D.(3) of the Permit and to properly record its inspections, including failing to include a certification of compliance with the Plan in the inspection reports in violation of Part IV.D.(3).(5) of the Permit.
- E. Capital City Club or its contractors failed to stabilize disturbed/denuded areas of the site to minimize erosion and sedimentation, leaving the site in violation of Part IV.D.2.a.(1) of the Permit. Specifically, Capital City Club failed to stabilize the area around "Infall #1" and "Infall #2," Sediment Basin "C," Sediment Basin "J," areas around Brookhaven Lake, and soil stockpiles.
- F. Capital City Club or its contractors failed to install an appropriate velocity dissipation device. EPA observed sediment and sediment laden water near the outfall and downstream in the unnamed tributary of Nancy Creek or Nancy Creek, in violation of Part IV.D.2.b.(2) of the Permit.
- G. Capital City Club or its contractors failed to document that corrective action was taken to address elevated turbidity reading of 1,000 NTUs at the outfall of Brookhaven Lake on February 21, 2008, as required by Part IV.D.5.d(3).(c) of the Permit.

23. Therefore, based on the foregoing, Complainant alleges 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 GAEPD Permit.

III. Stipulations and Findings

24. 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.

25. 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 or referenced herein.

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

27. 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.

28. By signing this CA/FO, Respondent certifies that the information it has supplied to EPA 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.

29. 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 to EPA was materially false or inaccurate at the time such information or certification was provided to EPA.

30. 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

31. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that **One Hundred and Fifty Seven Thousand Five Hundred dollars (\$157,500)** is an appropriate civil penalty to settle this action.

32. 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 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

33. 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
West NPDES Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

35. 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.

36. 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

37. 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.

38. Except as otherwise set forth herein, 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.

39. 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, the Administrative Order (No. CWA-04-2008-4788) issued to Capital City Club by Complainant on June 10, 2008 ("Administrative Order"), including any allegation that the Respondent failed to comply with the Administrative Order, or Complainant's inspection report resulting from the CSWEI. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained or referenced 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. This CA/FO is not intended to create and it shall not be construed or otherwise deemed to recognize or create any claim, right, liability, estoppel, or waiver of rights in favor of any third-party or parties.

40. 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.

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

42. 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.

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

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

For Complainant:

Carol Baschon
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.

Atlanta, Georgia 30303-8960
(404) 562-9528

For Respondent:

Adam G. Sowatzka
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309
(404) 572-3503

45. 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.


46. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

47. 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:



James D. Giattina
Director
Water Protection Division

Date: 4/2/09

For RESPONDENT, CAPITAL CITY CLUB:



Date: 3-23-2009

NAME: MATT MCKINNEY

TITLE: GENERAL MANAGER AND CHIEF OPERATING OFFICER

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

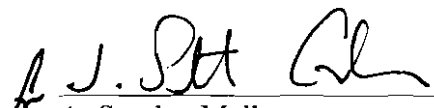
IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
Capital City Club)	FINAL ORDER
Capital city Club, Brookhaven)	
Golf Course)	
Atlanta, Georgia)	
)	Docket No. CWA-04-2009-4507(b)
Respondent.)	
)	
_____)	

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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 5/14/09



A. Stanley Meiburg
Acting Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Capital City Club, **Docket No. CWA-04-2009-4507(b)** (filed with the Regional Hearing Clerk on 5-19, 2009, was served on 5-19-, 2009, in the manner specified to each of the persons listed below.

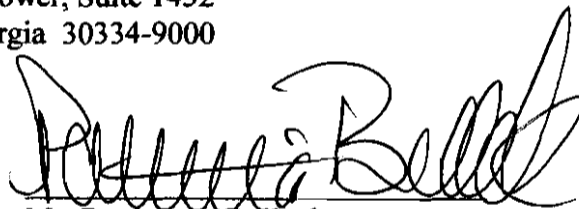
By hand-delivery:

Ms. Carol Baschon
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:

Adam G. Sowatzka
King & Spalding LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309

James A. Sommerville
Chief, Program Coordination Branch
Georgia Environmental Protection Division
2 Martin Luther King Jr., Drive, S.E.
East Floyd Tower, Suite 1452
Atlanta, Georgia 30334-9000



Ms. 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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 3/26/09
(Name) (Date)

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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Capital City Club, Brookhaven Golf Course, Atlanta, GA
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 157,500
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2009-4507(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) |