



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 25 2012

CERTIFIED MAIL 70113500000320640185
RETURN RECEIPT REQUESTED

Mr. Brad Freeman
President, Sullivan & Chase Commercial Properties
305 Vanderbilt Road
Asheville, North Carolina 28803

Re: Consent Agreement and Final Order
Docket No. CWA-04-2012-4531(b)
South Medical College
Asheville, North Carolina

Dear Mr. Freeman:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Namon Mathews at (404) 562-9777 or via email at mathews.namon@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Charles Wakild – Division of Water Quality
North Carolina Department of Environment and Natural Resources

Mr. Jim Simons - Division of Land Resources
North Carolina Department of Environment and Natural Resources

RECEIVED
EPA REGION IV

2012 SEP 25 AM 11:45

HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
SULLIVAN & CHASE COMMERCIAL)	FINAL ORDER
PROPERTIES)	
SOUTH MEDICAL COLLEGE)	
ASHEVILLE, NORTH CAROLINA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2012-4531 (b)
_____)	

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. 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)(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, 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. At all times relevant to this action, Sullivan & Chase Commercial Properties ("Respondent"), is a corporation duly organized and existing under the laws of the State of North Carolina and, therefore, 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, Respondent owned and/or operated a construction site known as South Medical College (Development) located at 139 Sweeten Creek Road in Asheville, North Carolina.

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 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 North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System for Construction Activities*, Permit No. NCG010000 ("Permit"), in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was reissued on January 1, 2010, and expired on August 2, 2011. It was reissued on August 3, 2011 and will expire on July 31, 2016.

8. The City of Asheville is responsible for the issuance, compliance and enforcement of North Carolina General Statute 113A-54.1, the rules adopted by the North Carolina Sedimentation Control Commission, and the approval of coverage under the Permit upon submission and approval of an Erosion and Sedimentation Control Plan (Plan) prior to commencement of construction.

9. In September 2010, Respondent submitted a Plan to the City of Asheville seeking approval and coverage under the Permit for its Development. The City of Asheville issued its approval of the Plan on September 20, 2010.

10. Part I.A.2 of the Permit requires the implementation of the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit, unless to correct an emergency or to make a minor modification, in which case the deviation must be noted on the approved Plan. A copy of the approved Plan and copy of the NPDES permit must be maintained at the Development.

11. Part I.A.3.d of the Permit requires that all building material waste be disposed of properly.

12. Part I.A.4 of the Permit requires the Permittee to select, install, implement and maintain Best Management Practices ("BMPs") and control measures that minimize pollutants in the discharge to meet the requirements of the Permit.

13. Part I.B.5 of the Permit requires immediate on-site action to control the discharge of sediments, if visible sedimentation is leaving the site or entering receiving waters. Where visible

deposition of sediment has occurred in surface waters or wetlands, NCDENR must be contacted within twenty-four (24) hours of becoming aware of the deposition.

14. Part I.B.6 of the Permit requires a record of inspections be kept by the Permittee. Records must provide the details of each inspection including observations, and actions taken in accordance with the Permit as well as a record of all rainfall and monitoring observations.

- a. Inspection records of control measures must include, at a minimum: 1) identification of the measures inspections; 2) date and time of the inspection; 3) name of the person performing the inspection; 4) indication of whether the measures were operating properly; 5) description of maintenance needs for the measure; 6) corrective actions taken; and 7) date of actions taken.
- b. Inspection records of stormwater discharge outfalls must include, at a minimum: 1) identification of the discharge outfall inspected; 2) date and time of the inspection; 3) name of the person performing the inspection; 4) evidence of indicators of stormwater pollution such as oil sheen, floating or suspended solids or discoloration; 5) indication of visible sediment leaving the site; 6) actions taken to correct/prevent sedimentation; and 7) date of actions taken.
- c. If visible sedimentation is found outside of the site limits, inspection records must include: 1) an explanation as to the actions taken to control future releases; 2) actions taken to clean up or stabilize the sediment that has left the site limits; and 3) the date of actions taken.
- d. Inspections records should include an evaluation of the stream or wetland onsite or offsite (where accessible) to determine if visible sedimentation has occurred.
- e. If the discharge from a site results in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions.

15. Part I.C.1 of the Permit requires compliance with Final Limitations and Controls (Part I.A of the Permit) once disturbance has begun on the site until completion of construction or development and establishment of a permanent groundcover.

16. Part I.C.2 of the Permit requires the Permittee to provide the operation and maintenance necessary to operate stormwater and all erosion and sedimentation control measures at optimum efficiency.

17. Part I.C.3 of the Permit requires maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment or other pollutants be performed as soon as possible and before the next storm event if such actions are discovered during Permittee inspections.

18. Part II.B.1 of the Permit requires compliance with all conditions of the Permit. Any Permit noncompliance constitutes a violation of the CWA.

19. Part II.B.2 of the Permit requires all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment be taken.

20. Part II.C.1 of the Permit requires the Permittee to properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit.

21. On March 01, 2011, representatives of the EPA, in conjunction with the NCDENR, 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 hereunder at 40 Code of Federal Regulations (“C.F.R.”) § 122.26 and the Permit.

22. As a result of the CSWEI, the EPA determined that stormwater 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. During the CSWEI, the EPA inspectors observed the following:

- A. The Respondent failed to implement the approved Plan as required by Part I.A.2 of the Permit. Control measures to block off the preexisting construction entrance/exit on the northern perimeter of the site near Sweeten Creek Road were not installed properly; three (3) discharge outfall locations were observed during the inspection that were not on the plan. Two (2) of these outfalls discharged to the unnamed tributary of Sweeten Creek on the northern perimeter of the site and one (1) discharged along the eastern perimeter of the Development.
- B. The Respondent failed to properly dispose of waste material as required by Part I.A.3.d of the Permit. Construction debris was observed mixed in with a soil stockpile on the eastern portion of the Development.
- C. The Respondent failed to maintain inspection records on site as required by Part I.B.6 of the Permit. However, inspection reports provided via e-mail, by Brad Goodson with Tennoca Construction Company, indicated that inspections commenced on January 1, 2011.
- D. The Respondent failed to install and maintain BMPs to minimize the discharge of pollutants as required by Parts I.A.4, I.C.1, I.C.2, I.C.3, II.B.1, II.B.2, and II.C.1, as required by the Permit. Specifically, perimeter silt fencing was observed in need of maintenance on the northern, southern, and eastern sections of the Development; inlet protection was in need of maintenance on the northern and eastern sections of the Development; stabilization was needed along the banks of the unnamed tributary to Sweeten Creek; pre-existing entrance/exit off of Roberts Road was in need of maintenance; three (3) sediment basins (traps) were observed in need of maintenance.

E. The Respondent failed to take actions to control the discharge of sediment from entering the receiving streams as required by Parts I.B.5 and II.B.2 of the Permit. Specifically, two (2) outfalls were observed on the northern portion of the Development with evidence of sediment discharges into the unnamed tributary of Sweeten Creek. Unpermitted discharges were observed where sediment had breached the silt fencing on the northwestern corner of the Development and in the culvert area parallel to Roberts Road.

23. Therefore, the 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 Permit.

III. Stipulations and Findings

24. 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.

25. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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

31. 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 Three Thousand Nine Hundred Dollars (\$3,900) is an appropriate civil penalty to settle this action.

32. 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 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, 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

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

35. 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

36. 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.

37. 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 the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

38. 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. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any other liability resulting from violations that were not alleged in this CA/FO, including criminal liability. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the 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.

39. 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.

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

41. 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.

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

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

For Complainant:

Michele Wetherington
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9613

For Respondent:

Brad Freeman, President
Sullivan & Chase Commercial Properties
305 Vanderbilt Road
Asheville, North Carolina 28803

44. 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.

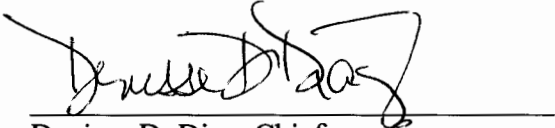
45. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

46. 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:



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

Date: 9/25/12

For RESPONDENT, SULLIVAN & CHASE COMMERCIAL PROPERTIES:



Brad Freeman, President
Sullivan & Chase Commercial Properties

Date: 8/14/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
SULLIVAN & CHASE COMMERCIAL) CONSENT AGREEMENT AND
PROPERTIES) FINAL ORDER
SOUTH MEDICAL COLLEGE)
ASHEVILLE, NORTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2012-4531 (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: 9/25/2012

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 South Medical College

Docket No. CWA-04-2012-4531 (b) (filed with the Regional Hearing Clerk on SEP 25 2012

2012, was served on SEP 25 2012 2012, in the manner specified to each of the persons listed below.

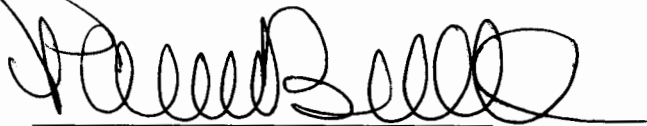
By hand-delivery:

Michele Wetherington
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:

Mr. Brad Freeman, President
Sullivan & Chase Commercial Properties
305 Vanderbilt Road
Asheville, North Carolina 28803

Charles Waklid
Director, Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617



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 COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 8/23/12
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree.
USAO COLLECTS.
- Administrative Order/Consent Agreement.
FMS COLLECTS PAYMENT.
- SF Judicial Order/Consent Decree.
FMS COLLECTS.
- Other Receivables
- This is an original debt.
- This is a modification.

PAYEE: Sullivan & Chase Commercial Properties - South Medical College, Asheville, NC
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 3,900
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2012-4530 (b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

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/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044
 2. Originating Office (ORC)
 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 sent to:
1. Originating Office
 2. Designated Program Office
 3. Regional Hearing Clerk
 4. Regional Counsel

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2012-4531(b)

Total Amount Due: \$ 3,900

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____