



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 9 2010

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Stephen A. Studer, Esq.
Krieg-Devault, LLP
520 Park Place Court, Suite 300
Mishawaka, Indiana 46454-3582

Re: Consent Agreement and Final Order, Outlook Cove, LLC

*CWA-05-2009-0004
JW*

Dear Mr. Studer:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on June 9, 2010, resolving the matters alleged therein. Payment of the civil penalty is due in two installments beginning with a \$10,500.00 payment due within 30 days of June 9, 2010 – the effective date of this CAFO. The second installment payment of \$10,500 is due within 180 days of June 9, 2010. Please refer to Billing Docket No. 2751063W008, and the case Docket Number above when remitting payment. Payment obligations and instructions are noted in paragraphs 8 and 10 of the CAFO.

Thank you for resolving this matter. Should you have any questions, please do not hesitate to contact me at (312) 886-0124 or Robert Thompson, Associate Regional Counsel at (312) 353-6700.

Sincerely yours,

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure

cc: Robert Tucker (w/ encl.), USACOE, Detroit, MI
Liz Pelloso (w/ encl.), IDEM, Indianapolis, IN
Robert Thompson (w/ encl.), ORC, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)

Outlook Cove, LLC,)

100 Outlook Cove Drive,)
LaPorte, Indiana,)

Respondent.)
_____)

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PROTECTION AGENCY

Consent Agreement and Final
Order to Resolve a Proceeding to
Assess a Class II Civil Penalty
Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Docket No. CWA-05-2009-0004

CONSENT AGREEMENT

Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), and Respondent, Outlook Cove, LLC (Outlook Cove), wishing to settle all matters pertaining to their involvement in this case, have consented to the entry of this Consent Agreement.

NOW, THEREFORE, before the taking of any testimony, without the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby stated as follows:

1. U.S. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act (CWA or The Act), 33 U.S.C. § 1319(g), by filing an Administrative Complaint (Complaint) against J & H Construction, Inc., Outlook Cove, LLC, and G.M. Fedorchak & Associates, Inc., on March 5, 2009.

2. The Complaint alleged that between September 2004 and October 31, 2004, J & H Construction, Inc., acting on behalf of Outlook Cove, LLC, and G.M. Fedorchak & Associates, Inc., discharged approximately 13,000 cubic yards of fill and dredged material and organic debris

from excavators and bulldozers into a 700 foot length of shoreline wetlands of varying width that abut the open waters of "Outlook Cove" of Pine Lake (the site), within the city of LaPorte, LaPorte County, Indiana (or formerly 1310 Pine Lake Avenue); in the northeast quarter of the northwest quarter of the northeast quarter of Section 27, Township 37 North, Range 3 West, Center Township without a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. On March 18, 2010, the Complaint was amended so that Outlook Cove was the only remaining Respondent.

3. Respondent has not filed an Answer to the original or the amended Complaint.

4. The parties have agreed that this matter should be settled without resort to a hearing or further proceedings, upon the terms set forth in this Consent Agreement.

Terms of Settlement

5. For the purpose of this proceeding and in accordance with 40 C.F.R. § 22.18(b) and (c), Respondent: (a) admits that EPA has jurisdiction over the subject matter set forth in this Consent Agreement; (b) neither admits nor denies the facts stipulated in this Consent Agreement; and (c) consents to the terms of this Consent Agreement.

6. In consideration of the alleged violation, the environmental and compliance significance of the matter, and based upon the nature, circumstances, extent and gravity of the violations alleged herein, as well as Respondent's ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is \$21,000.

7. Upon execution of the attached Final Order, Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement, including, but not limited to, its right to request a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and its right to appellate review of the attached Final Order found at Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

8. Respondent agrees to pay the civil penalty set out in Paragraph 6 for the alleged violations in the complaint by mailing certified or cashier's checks made payable to "Treasurer, United States of America" to the appropriate following address:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Payment of the civil penalty is to be made in two (2) installments, with the first payment of \$10,500 due within thirty (30) calendar days from the effective date of this Consent Agreement; the second payment of \$10,500 to be paid within 180 days of the effective date of this Consent Agreement. The effective date of the Consent Agreement is the date that it is filed with the Regional Hearing Clerk. EPA reserves the right to require Respondent to provide a docket number on the check.

9. This civil penalty is not deductible for federal tax purposes.

10. When Respondent pays the civil penalty in accordance with Paragraph 8 above, Respondent shall simultaneously and separately send notice of such payment, including a copy of the check, to each of the following three parties at the address indicated:

Regional Hearing Clerk
Planning and Management Division (19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Robert L. Thompson
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Gregory Carlson
Water Division (WW-16J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

11. Respondent's failure to pay the assessed civil penalty in accordance with Paragraph 8, above, will result in the referral of this matter to the United States Department of Justice for collection in accordance with Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. In addition to any unpaid balance and interest on this penalty, Respondent shall also be required to pay attorney's fees and costs for collection.

12. Interest shall accrue on any amounts overdue under the terms of this Consent Agreement at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. A late payment handling charge of \$15.00 will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, a six percent (6%) per annum penalty will be assessed on any principal amount not paid within 90 days of its due date as listed in paragraph 8 of the Consent Agreement.

General Provisions

13. This Consent Agreement resolves all claims arising out of the transactions and occurrences alleged in the Complaint. This Consent Agreement does not constitute a permit or a license and does not relieve Respondent of its obligation to comply with all applicable Federal, State or local laws, regulations or requirements.

14. This Consent Agreement constitutes the entire agreement between the Complainant and the Respondent.

15. Each of the undersigned representatives of the parties certifies that he or she is authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and to legally bind that party to it.

16. Nothing in this Consent Agreement shall be construed to be a ruling on, or determination of, any issue related to any Federal, State, or local permit.

17. This Consent Agreement shall be binding upon U.S. EPA and upon the officers, directors, employees, successors, and assigns of Respondent.

18. Each party shall bear its own costs, attorney fees and disbursements in this action.

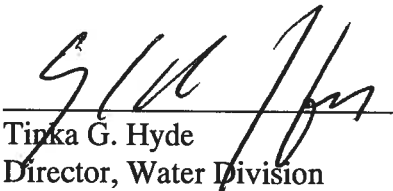
Public Notice

19. In accordance with section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), this order will become effective 30 days after the execution of the accompanying Final Order by the Regional Administrator. No person responded to the public notice of the commencement of this action, pursuant to 33 U.S.C. § 1319(g)(4)(A), and thus no interested persons need be notified of the issuance of the Final Order in this matter under section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

United States Environmental Protection Agency, Region 5
Complainant

Dated: 6/4/10




Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection
Agency, Region 5

Consent Agreement and Final Order
In the Matter of Outlook Cove, LLC
Docket No. CWA-05-2009-0004

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

Outlook Cove, LLC,
Respondent

Dated: 5-17-10


[name] Gerald M. Fedorchak, Jr
[title] PRESIDENT

**Consent Agreement and Final Order
In the Matter of Outlook Cove, LLC
Docket No. CWA-05-2009-0004**

FINAL ORDER

This foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondents are hereby **ORDERED** to comply with all of the terms of the preceding Consent Agreement, effective immediately.

Date: June 7, 2010



Susan Hedman
Regional Administrator
United States Environmental Protection
Agency, Region 5

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PROTECTION AGENCY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Consent Agreement and Final Order (Docket No. CWA-05-2009-0004) was filed with the Regional Hearing Clerk on June 9, 2010, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the 9th day of June 2010, upon the following:

Gerald M. Fedorchak, President
Outlook Cove, LLC
100 Outlook Cove Drive
LaPorte, Indiana 46350;

and

Stephen A. Studer, Esq.
Krieg-Devault, LLP
520 Park Place Court (Suite 300)
Mishawaka, Indiana 46545-3582

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

A Consent Agreement and Final Order copy (Docket No. CWA-05-2009-0004) was served by United States Mail, Certified and Postage Prepaid, on the 9th day of June 2010, upon the following:

Honorable Chief Judge Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

A handwritten signature in blue ink, appearing to read "Gregory T. Carlson".

Gregory T. Carlson
U.S. Environmental Protection
Agency - Region 5 (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604