UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	**ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED PENALTY ASSESSMENT**
SANDERS SQUARE, LLC	)	
SANDERS SQUARE	)	
CUMMING, GEORGIA	)	**DOCKET NO. CWA-04-2006-4537**
	)	
	)	**Proceeding under Section 309(g)(2)(B)**
	)	**of the Clean Water Act,**
	)	**33 U.S.C. § 1319(g)(2)(B)**
Respondent.	)	

NOTICE OF CORRECTED SERVICE

The Complaint in this matter was originally filed and served on September 20, 2006. In addition to serving the Complaint on Respondent, a copy was mailed to Respondent's attorney. An Answer was filed on October 20, 2006. However, the copy served on Respondent was returned to EPA unclaimed. Respondent's Answer states as a "Fourth Legal Defense" the defense of "improper service of the Complaint on Respondent." During an ADR conference call on Monday, December 18, Judge Gunning asked about the basis for this defense, and Respondent's attorney indicated that Respondent never received a copy of the Complaint, although the Answer was filed in light of the attorney's receipt of the Complaint. Complainant indicated during that call that it would re-serve the Complaint on Respondent to eliminate any question about the adequacy of service. Accordingly, Complainant files this Notice of Corrected Service and states that on December 19, 2006, Complainant sent to Respondent a copy of the attached Complaint (identical to the original Complaint), by United States Certified Mail, Return Receipt Requested.

Respectfully submitted this 20th day of December, 2006.

Paul Schwartz

Paul Schwartz
Attorney for Complainant
Associate Regional Counsel
EPA Region 4
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9576

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Pete Calabro
Sanders Square, LLC
626 W. Crossville Rd., Suite 216
Roswell, GA 30075

SUBJ: Administrative Complaint and Notice of Proposed Penalty Assessment
Docket No. CWA-04-2006-4537
Sanders Square
Cumming, Georgia

Dear Mr. Calabro:

Enclosed is a document entitled Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency (EPA) is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to Sanders Square, LLC for violations at its facility known as Sanders Square. The Complaint alleges that Sanders Square, LLC failed to meet the requirements of the Georgia General Permit, *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 (the Permit), effective August 13, 2003, in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. The Complaint requests that a civil penalty of up to $157,500 be assessed for these violations.

A copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999), which apply to this case, is enclosed for your reference.

Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.15(c), you may request a hearing regarding any material fact alleged in the Complaint and on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out at 40 C.F.R. Part 22.

In order to be entitled to a hearing under the CWA, you must file an Answer to the Complaint within thirty (30) days after receipt of this Complaint as outlined in Section VI of the Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual

allegations of the Complaint with regard to which you have any knowledge. If you fail to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, you may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing on such factual allegations. In that case, a civil penalty will be assessed against you and will become due and payable without further proceedings after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

In addition, failure to pay the assessed penalty may subject you to a civil action to collect the assessed penalty, plus interest, attorney fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

You may request an informal meeting with EPA to discuss settlement of this action by contacting Paul Schwartz, Associate Regional Counsel, at (404) 562-9576. You have the right to be represented by an attorney at any stage of the proceedings, including in any informal discussions with EPA. Please note that a request for an informal settlement conference does not extend the thirty (30) day period in which to submit an Answer to this Complaint.

If you have any questions, please contact Paul Schwartz at (404) 562-9576.

Sincerely,

James D. Giattina, Director
Water Management Division

Enclosures

cc: Georgia Environmental Protection Division
Mr. Tommy Craig, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	ADMINISTRATIVE COMPLAINT
	)	AND NOTICE OF PROPOSED
SANDERS SQUARE, LLC	)	PENALTY ASSESSMENT
SANDERS SQUARE	)	
CUMMING, GEORGIA	)	DOCKET NO. CWA-04-2006-4537
	)	
	)	Proceeding under Section 309(g)(2)(B)
	)	of the Clean Water Act,
	)	33 U.S.C. § 1319(g)(2)(B)
Respondent.	)	
	)	

ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED PENALTY ASSESSMENT

I. Nature of the Action

1. This Administrative Complaint and Notice of Proposed Penalty Assessment ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g)(1) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who in turn has delegated it to the Director of the Water Management Division of EPA, Region 4, who in turn has delegated it to the Chief of the Water Programs Enforcement Branch of EPA, Region 4 ("Complainant")

2. Complainant hereby requests the assessment of a civil penalty against Sanders Square, LLC ("the Respondent"), and provides notice of the Respondent's opportunity to request a hearing on the proposed penalty assessment pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the proposed *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*, 40 Code of Federal Regulations ("C.F.R.") Part 22, Published at 63 Fed. Reg. 9464 (February 25, 1998), for failure to comply with the requirements for storm water discharges in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

II. Statutory and Regulatory Background

3. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as "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 certain other sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342, which authorizes the issuance of permits for the discharge of pollutants into waters of the United States.

4. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System ("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.

5. The GAEPD issued the Georgia General Permit, Permit No. GAR100001, *Authorization to Discharge Under the National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity for Stand Alone Construction Projects* ("the 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 August 13, 2003, and shall expire on July 31, 2008.

6. 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 of less than one (1) acre of total land area which are not part of a larger common plan of development or sale.

III. Allegations

7. At all times relevant to this action, the Respondent was a limited liability company formed under the laws of the State of Georgia and therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. At all times relevant to this action, the Respondent owned and/or operated a site know as Sanders Square ("the Facility") located on State Road 20 and Sanders Road, Cumming, Georgia, which discharged storm water into an unnamed tributary of Little Ridge Creek, a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

9. On February 7, 2005, the Respondent submitted to the GAEPD a Notice of Intent ("NOI") requesting coverage under the Permit. A notice of coverage was sent by GAEPD to Respondent.

10. Part IV.A.1 of the Permit requires completion of an Erosion, Sedimentation and Pollution Control Plan ("Plan") prior to submitting an NOI. Part IV of the Permit further requires that the Plan be designed, installed and maintained for the entire construction activity covered by the Permit. Part III.C.2 of the Permit states that 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. Part III.C.2 further provides that, if during the Permittee's routine inspections of the construction site, BMP failures are observed which have resulted in sediment deposition into receiving waters, the Permittee shall correct the BMP failures and shall submit a summary of violations to GAEPD in accordance with Part V.A.2 of the Permit.

11. Part IV.(i) and (iii) of the Permit require that, other than certain specified exceptions, no construction activities shall be conducted within a twenty-five (25) foot buffer along the banks of all state waters and the buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed.

12. Part IV.D.1 of the Permit requires that the Plan include a description and chart or timeline of the intended sequence of major activities which would disturb soils on major portions of the site.

13. Part IV.D.2.a.(1) of the Permit requires that the Plan include a record of the dates when major grading activities would occur.

14. Part IV.D.2.a.(2) of the Permit requires the development and implementation of a Plan containing a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the Site to the degree attainable.

15. Part IV.D.2.a.(3) of the Permit requires, for common drainage locations, a temporary (or permanent) sedimentation basin providing at least 1800 cubic feet (67 cubic yards) of storage per acre drained, or equivalent control measures.

16. Part IV.D.2.c.(2) of the Permit requires that off-site vehicle tracking of dirt, soils and sediments and the generation of dust shall be minimized or eliminated to the maximum extent practical.

17. Part IV.D.4 of the Permit requires that each Plan shall contain a description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating condition.

18. 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 were installed or used by the Permittee to achieve compliance with the conditions of the Permit and with the required plans.

19. On July 21, 2005, representatives of EPA in conjunction with the GAEPD performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Respondent's Facility. The purpose of EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility and determine whether the Facility was in compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

20. The CSWEI revealed that the Respondent failed to comply with Part III.C.2 of the Permit by failing to properly design, install, or maintain BMPs. During the CSWEI, it was noted that silt fences installed before the buffer zone were not adequate and were allowing sediment-laden water into the pond before being discharged. In addition, sediments were being discharged

from the temporary sediment basin at the time of the inspection. There was no storm drain inlet or sediment trap installed at the temporary sediment basin near Nuckolls Road, and erosion was occurring at the drainage ditch parallel to State Road 20 and Buford Highway. The CSWEI also revealed that additional stone was needed on the track-out pad located on Sanders Road, and that maintenance was needed at the rock outlet of the storm drain inlet/outlet. EPA inspectors further observed that temporary groundcover was not being maintained throughout the site at the time of the inspection and sediment was observed off-site from the temporary drainage ditch down slopes and from the temporary sedimentation basin.

21. The CSWEI revealed that the Respondent failed to comply with Part IV of the Permit by failing to install Erosion and Sediment Control measures as specified in the Plan, including a second sedimentation basin.

22. The CSWEI revealed that the Respondent failed to comply with Part IV.(i) and (iii) of the Permit by allowing construction activities within the twenty-five (25) foot buffer. Silt fences and hay bales were observed in the buffer zone and sediment laden water was ponding and allowing sediment discharges into the receiving water at the time of the inspection.

23. The CSWEI revealed that the Respondent failed to comply with Part IV.D.1 of the Permit by failing to include in the Plan a description and chart or timeline of the intended sequence of major activities which would disturb soils on major portions of the site. The Plan reviewed during the inspection did not contain this information.

24. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(1) of the Permit by failing to ensure that the Plan contained a record of the dates when major grading activities were to occur. The Plan reviewed during the inspection did not contain this information.

25. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(2) of the Permit by failing to ensure that the Plan contained a description of, and failing to implement, structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the maximum extent practicable. During the CSWEI, discharges of sediment were occurring from the temporary drainage ditch, down slopes, and from the temporary sedimentation basin due to inadequate stabilization of these areas.

26. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.a.(3) of the Permit by failing to implement a Plan requirement for common drainage locations, a temporary (or permanent) sedimentation basin providing at least 1800 cubic feet (67 cubic yards) of storage per acre drained, or equivalent control measures. The site covers over 45 disturbed `acres. The Respondent's Plan called for the installation of two sedimentation basins; only one sedimentation basin had been installed for drainage at the time of the inspection.

27. The CSWEI revealed that the Respondent failed to comply with Part IV.D.2.c.(2) of the Permit by failing to ensure that off-site vehicle tracking of dirt, soils and sediments and the generation of dust was minimized or eliminated to the maximum extent practical. Additional stone was needed at the entrance/exit located on Sanders Road at the time of the inspection.

28. The CSWEI revealed that the Respondent failed to comply with Part IV.D.4 of the Permit by failing to ensure that the Plan contained a description of, and failing to implement, procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures. At the time of the inspection temporary groundcover measures were not maintained on disturbed and sloped areas.

29. The CSWEI revealed that the Respondent failed to comply with Part V.L of the Permit by failing to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which were installed or used by the Permittee to achieve compliance with the conditions of this Permit and with the required Plans. Inadequate maintenance or installation problems were observed during the CSWEI on silt fences in the buffer zone, on the storm drain inlet, on the temporary sedimentation basin, on check dams above the sediment traps on the commercial site, on the temporary drainage ditch, on the diversion structures, on the entrance/exit track-out pad on Sanders Road, on the rock outlet at the storm drain inlet/outlet, and on temporary ground cover on disturbed and sloped areas.

30. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) by failing to comply with Part III.C.2, Part IV, Part IV.(i) and (iii), Part IV.D.1, Part IV.D.2.a.(1), Part IV.D.2.a.(2), Part IV.D.2.a.(3), Part IV.D.2.c.(2), Part IV.D.4, and Part V.L of the Permit.

IV. Proposed Penalty

31. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess a penalty of up to $11,000 per day of violation, up to a maximum amount of $157,500 for violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. *Civil Monetary Penalty Inflation Adjustment Rule*, 69 Fed. Reg. 7121 (February 13, 2004).

32. Based on the foregoing Allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant proposes that a penalty of up to $157,500 be assessed against Respondent.

33. This penalty, as assessed, has taken into account the statutory penalty factors, as identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations, and the Respondent's ability to pay, prior compliance history, degree of culpability, accrued economic benefit or savings, and such other matters as justice may require. With respect to severity of the violations described in the foregoing allegations, EPA states that the violations resulted in discharges of sediment into an unnamed tributary of Little Ridge Creek. Further, the Respondent's lack of attention to its obligations under the Permit is demonstrated by the fact that, both prior to and after the date of

the CSWEI, the Respondent received warning notices from Forsyth County inspectors relating to inadequacy of the Respondent's implementation of BMPs at the Facility, including Warning Notices received on March 24, 2005, April 5, 2005, April 28, 2005, May 11, 2005, June 23, 2005, July 15, 2005, August 16, 2005, September 12, 2005, October 6, 2005, December 2, 2005, and January 23, 2006. Further, it is apparent that certain of the violations, because of their nature, had been ongoing from the date that construction had commenced until the date of the CSWEI (e.g., such as failure to include required items in the Plan and failure to install adequate sediment basins). In addition, the repeated Warning Notices further demonstrate that many of the violations continued or were repeated on multiple days over a period of at least nine months.

V. Procedures Governing This Administrative Litigation

34. The rules of procedure governing this civil administrative litigation are set forth in the *Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,* 40 C.F.R. Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999).

35. Please be advised that 40 C.F.R. Part 22 prohibits any ex parte discussion of the merits of a case with, among others, the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer or Administrative Law Judge after the Complaint has been issued. 40 C.F.R. § 22.08.

VI. Answering The Complaint

36. Where the Respondent intends to contest any material fact upon which this Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that the Respondent is entitled to judgment as a matter of law, the Respondent must file with the Regional Hearing Clerk, EPA Region 4, both an original and one copy of a written Answer to the Complaint. Such Answer must be filed within thirty (30) calendar days after service of the Complaint at the address below:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

40 C.F.R. § 22.15(a). The Respondent shall also serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

37. A copy of the Answer and all other documents that the Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

38. The Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that the Respondent disputes (and thus intends to place at issue in the proceeding); and (3) whether the Respondent requests a hearing. 40 C.F.R. § 22.15(b).

39. The Respondent's failure to affirmatively raise in the Answer, facts that constitute or that might constitute the grounds of its defense may preclude the Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

40. If the Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If the Respondent fails to file a timely [i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, the Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the Respondent for a failure to timely file an Answer to the Complaint, a Default Order may be issued pursuant to 40 C.F.R. § 22.17(c).

41. Any penalty assessed in the Default Order shall become due and payable by the Respondent without further proceedings thirty (30) calendar days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final Default Order against the Respondent, and to collect the assessed penalty amount, in federal court.

VII. Opportunity To Request A Hearing

42. In its Answer, the Respondent may request a hearing upon the issues raised by the Complaint and Answer. 40 C.F.R. § 22.15(c). If the Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

43. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

44. If the Respondent fails to request a hearing in its Answer, such failure may operate to preclude the Respondent from obtaining judicial review of an adverse EPA order. See 16 U.S.C. § 2615(a)(3).

45. Should the Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the Respondent not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, and only members of the public who submitted timely comments during the public notice period will have an additional thirty (30) days to petition EPA to set aside such Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

46. Neither assessment nor payment of an administrative penalty pursuant to the CWA shall affect the Respondent's continuing obligation to comply with the CWA, any other federal or state laws, and with any separate Compliance Order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

VIII. Exhaustion Of Administrative Remedies

47. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. The Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board ("EAB"). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within thirty (30) days after the initial decision is served. Note that the forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to nor extend the thirty (30) days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

48. If the Respondent fails to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30 and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), the Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

IX. Informal Settlement Conference

49. Whether or not the Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, the Respondent may comment on the charges made in this Complaint, and the Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions the Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the Respondent wishes to raise. 40 C.F.R. § 22.18.

50. Any request for an informal conference or any questions that the Respondent may have regarding this Complaint should be directed to:

Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9576

51. The parties may engage in settlement discussions irrespective of whether the Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). The Respondent's requesting a formal hearing in its Answer does not prevent them from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

52. A request for an informal settlement conference does not affect the Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

53. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, the Respondent waives its right to contest the allegations in the Complaint and waive their right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

54. The Respondent's entering into a settlement through the signing of such Consent

Agreement and Final Order, and their complying with the terms and conditions set forth in such Consent Agreement and Final Order, terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. The Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

X. Solution Of This Proceeding Without Hearing Or Conference

55. The Respondent may choose to resolve this proceeding at any time by paying the specific penalty proposed in this Complaint in full, and by filing with the Regional Hearing Clerk a copy of the payment instrument. 40 C.F.R. § 22.18(a)(1).

56. If the Respondent pays the proposed penalty in full within thirty (30) days of the effective date of this Complaint, then no Answer need be filed. 40 C.F.R. § 22.18(a)(1).

57. If the Respondent chooses to pay the proposed penalty in full, Respondent shall submit a U.S. Government or certified check, paid to the order of the "Treasurer, United States of America," in the amount of $157,500, to the following address:

U. S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

Respondent must submit a copy of the payment instrument to:

Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

and to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

58. Such payment in full of the penalty proposed in this Complaint terminates this administrative litigation and the civil proceedings arising out of the allegations made in this

Complaint. Such payment does not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

59. For purposes of federal income taxation, the Respondent shall not be entitled to claim a deduction for any penalty payment pursuant to this Complaint.

ISSUED THIS 20th **DAY OF** September **, 2006:**
U.S. ENVIRONMENTAL PROTECTION AGENCY

Del Stewart for

James D. Giattina, Director
Water Management Division
U.S. EPA, Region 4

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached *Administrative Complaint and Notice of Proposed Penalty Assessment* in the matter of Sanders Square, LLC, Docket No. CWA-04-2006-4537 (filed with the Regional Hearing Clerk September 20, 2006), was served on December 19, 2006. in the manner specified to the person listed below.

By certified mail,
return receipt requested: Sanders Square, L.L.C.
Peter J. Calabro, Registered Agent
Sanders Square, LLC
625 W. Crossville Rd., Suite 216
Roswell, GA 30075

Date: 12/19/06

Mary Mattox
Environmental Protection Specialist
Water Programs Enforcement Branch
Water Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960
(404) 562-9733

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached Notice of Corrected Service in the matter of Sanders Square, LLC, Docket No. CWA-04-2006-4537) was served on December 20, 2006, in the manner specified to each of the persons listed below.

Original plus one copy by hand delivery to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

By certified mail, return receipt requested:

Mr. Pete Calabro
Sanders Square, LLC
626 W. Crossville Rd., Suite 216
Roswell, GA 30075

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Date: 12/20/06

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