



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

MAR 11 2015

CERTIFIED MAIL 7012 0470 0001 4027 1802
RETURN RECEIPT REQUESTED

Ms. Brooke Frankel Dickerson
Arnall Golden Gregory LLP
171 17th Street, NW, Suite 2100
Atlanta, Georgia 30303

Re: Consent Agreement and Final Order No.: CWA-04-2015-4500(b)
Costco Wholesale Corporation, Cumming, Georgia

Dear Ms. Dickerson:

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 Paragraph IV Payment.

Should you have any questions or concerns, please contact Ms. Suzanne Armor, Associate Regional Counsel, at (404) 562-9701 or via email at armor.suzanne@epa.gov.

Sincerely,

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

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

Enclosure

cc: Mr. Tony Campbell
Georgia Environmental Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
COSTCO WHOLESALE CORPORATION) **CONSENT AGREEMENT AND**
1211 BALD RIDGE MARINA ROAD) **FINAL ORDER**
CUMMING, GEORGIA) **DOCKET NO. CWA-04-2015-4500**
)
RESPONDENT.)

RECEIVED
EPA REGION IV
2015 MAR 11 PM 3:00
HEARING CLERK

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40,176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division of the EPA, Region 4, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of the EPA, Region 4 (“Complainant”).

II. Complainant’s Allegations

3. At all times relevant to this action, Costco Wholesale Corporation (“Respondent”), was a corporation formed under the laws of the State of Washington and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. Respondent is the owner and operator of a construction site known as the Costco Property, which was a portion of a construction site formerly known as the Bald Ridge Marina Road Onsite Mass Grading site, located at 1211 Bald Ridge Marine Road in Cumming, Forsyth County, Georgia (“Site”). Respondent acquired legal title to the Site from Cannon Place, LLC (“Cannon”) on March 7, 2014. Cannon is the owner and operator of the adjacent construction site

known as Bald Ridge Marina Road Offsite Mass Grading site, located at 1201 Bald Ridge Marina Road, Cumming, Forsyth County, Georgia (“Offsite”).

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 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. 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 Stormwater Discharges Associated With Construction Activity For Stand Alone Construction Projects*, Permit No. GAR100001 (“Permit”) for the Site and Offsite 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 September 24, 2013, and expires on July 31, 2018. 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 stormwater point source discharges associated with construction activities including clearing, grading and excavation activities that result in the disturbance equal to or greater than one acre of total land area which are not part of a larger common plan of development or sale.

9. On March 15, 2013, Cannon submitted two NOIs, including an NOI for the Site and an NOI for Offsite, to GAEPD to acquire authorization to discharge stormwater associated with construction activity on both sites under the then-applicable 2008 Permit. On December 18, 2013, Cannon submitted to GAEPD two NOIs for coverage under the 2013 re-issuance of the Permit to discharge stormwater associated with construction activity for both the Site and Offsite.

10. On March 5, 2014, Respondent submitted to GAEPD a NOI for coverage under the 2013 Permit to discharge stormwater associated with construction activity for the Site.

11. Part II.A.3 of the Permit states that an enforcement action may be initiated for any unauthorized discharges of stormwater.

12. Part III.D.1 of the Permit requires best management practices (“BMPs”) for all construction activities and requires implementation in accordance with the design specifications

contained in the “Manual for Erosion and Sediment Control in Georgia” (“Manual”) published by the State Soil and Water Conservation Commission, as of January 1st of the year in which the land disturbing activity was permitted, to prevent or reduce the pollution of waters.

13. Part III.D.2 of the Permit states that the failure to properly design, install, or maintain BMPs shall constitute a violation of the Permit for each day on which such failure occurs.

14. Part III.D.4 of the Permit states that when the Permittee has elected to monitor outfalls, the discharge of stormwater 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 condition results in the turbidity of the discharge which exceeds the applicable Appendix B value.

15. Part III.D.5 of the Permit states that, when the Permittee has elected to sample outfalls, the discharge of stormwater runoff from disturbed areas where BMPs have not been properly designed, installed and maintained shall constitute a separate violation for each days on which such condition results in the turbidity of the discharge exceeding the Appendix B value. The Appendix B turbidity limit for waters supporting warm water fisheries and a surface water drainage area up to 25 square miles is 100 NTUs.

16. Part V.D of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.

17. Part V.L of the Permit requires the Permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit and the BMP Plan.

18. On or about April 7, 2014, the EPA received a report from GAEPD and the City of Cumming, Georgia (“City”) regarding alleged stormwater sediment discharges from the Site into tributaries to and directly into Lake Lanier, a public drinking water source.

19. On April 16 and April 22, 2014, Respondent and Respondent’s consultant AEC, Inc. (“AEC”), respectively, submitted reports describing the events which lead to a release of sediment within a 24-hour time period between April 6 and 7, 2014.

20. Based on information provided to the EPA by GAEPD, the City, Respondent and AEC, the EPA determined that stormwater associated with construction activity was discharged from the Site within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into an unnamed tributary that flows into Lake Lanier, an impoundment of the Chattahoochee River, a traditional navigable water of the United States.

21. The information provided to the EPA by GAEPD, the City, Respondent and AEC indicated the following:

A. The City collected photographic evidence of turbid water with suspended sediment from the Site to tributaries and allegedly to two coves of Lake Lanier on April 7, 2014. AEC inspected the Site on April 8, 2014, and observed sediment outside of the Site's limits of disturbance. See Incident Reports dated April 16, 2014, and April 22, 2014. Photographs taken by AEC show sediment and turbid water being transported over silt fences and into the tributaries leading to Lake Lanier, in violation of Parts III.D.1, III.D.2, V.D, and V.L of the Permit.

B. Photographic evidence collected by the City and by AEC indicate that the turbidity of the water was over 100 NTUs, in violation of Part III.D.5 of the Permit.

22. Therefore, Complainant alleges that Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), for unauthorized discharges of stormwater to waters of the United States and by failing to comply with conditions of the Permit as set forth above.

III. Stipulations and Findings

23. 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.

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

25. Respondent neither admits nor denies the factual allegations set out above.

26. 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. 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 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. 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 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 twenty-thousand, six-hundred and sixty dollars (\$20,660) 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 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, 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 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 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. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

38. 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. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

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

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 related to this proceeding:

For Complainant:

Suzanne K. Armor
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9701

For Respondent:

Brooke F. Dickerson
Arnall Golden Gregory LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
(404) 873-8666

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 proposed CA/FO 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.

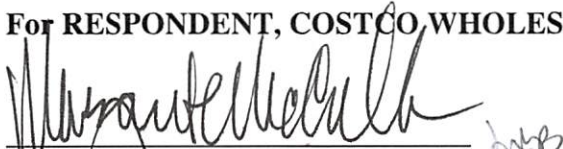
47. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations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

VI. Effective Date

48. 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:

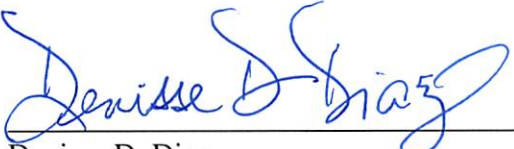
For RESPONDENT, COSTCO WHOLESALE CORP.:



Margaret C. McCulla
Assistant Secretary

Date: Nov. 25, 2014

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



Denisse D. Diaz

Date: 2/5/15

Chief, NPDES Permitting and Enforcement Branch
Water Protection Division
U.S. Environmental Protection Agency
Region 4

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
COSTCO WHOLESALE CORPORATION)	FINAL ORDER
1211 BALD RIDGE MARINA ROAD)	
CUMMING, GEORGIA)	DOCKET NO. CWA-04-2015-4500(b)
)	
RESPONDENT.)	
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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: 3/11/2015


Carol F. Baschon
Acting 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 Costco Wholesale Corporation, Docket No. CWA-04-2015-4500(b) (filed with the Regional Hearing Clerk on 3-11, 2015) was served on 3-11, 2015, in the manner specified to each of the persons listed below.

By hand-delivery:

Suzanne K. Armor
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Brooke F. Dickerson
Arnall Golden Gregory LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363

James A. Capp, Branch Chief
Watershed Protection Branch
ATTN: Jan Sammons, Unit Manager
Erosion and Sedimentation Unit
Georgia Environmental Protection Division
420 International Parkway
Suite 101
Atlanta, Georgia 30354

Scott Morgan
City of Cumming
Engineering and Stormwater Division
100 Main Street
Cumming, Georgia 30040



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