



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 16 2008

CERTIFIED MAIL

7007-2680-0001-3596-5119

RETURN RECEIPT REQUESTED

James W. Berling
Walton Land Development, LLC
8080 Steilen Drive
Florence, Kentucky 41042

Re: Consent Agreement and Final Order
Docket No. CWA-04-2008-4530(b)
Walton Towne Center
Walton, Kentucky

Dear Mr. Berling:

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 that you have met all of the provisions under this Final Order. We acknowledge receipt of full payment in the amount of \$40,000.

Should you have any questions or problems, please contact Ms. Araceli Bonilla at (404) 562-9790.

Sincerely,

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

James D. Giattina
Director
Water Management Division

Enclosure

cc: Kentucky Department for Environmental
Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
WALTON LAND DEVELOPMENT, LLC) CONSENT AGREEMENT AND
WALTON TOWNE CENTER) FINAL ORDER
WALTON, KENTUCKY)
)
) DOCKET NO. CWA-04-2008-4530(b)
RESPONDENT.)
_____)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

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

II. Allegations

3. At all times relevant to this action, Walton Land Development, LLC ("Respondent"), was a limited liability corporation formed under the laws of the Commonwealth of Kentucky and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a construction site known as Walton Towne Center ("Development") located at Kentucky Highway 16 and I-75 in Walton, Kentucky.

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

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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 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 Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA. KDEP is responsible for the enforcement of Kentucky Revised Statutes ("KRS") Chapter 224 and 401 Kentucky Administrative Regulations ("KAR") 5:055, Sections 1 and 5, and the approval of permit coverage upon submission of a Notice of Intent ("NOI").

7. KDEP issued a *General NPDES Permit for Storm Water Point Source Discharges, Construction Activities* ("Permit"), Permit No. KYR10, in accordance with the provisions of the KRS Chapter 224 and pursuant to 401 KAR 5:055, Sections 1 and 5, and the CWA. The Permit was effective October 1, 2002, and expired September 30, 2007.

8. The Permit is a Kentucky 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 five (5) acres of total land area which are not part of a larger common plan of development or sale.

9. To obtain coverage under the Permit, a signed NOI must be submitted to KDEP forty-eight (48) hours before construction activity begins. Failure to obtain or maintain Permit coverage shall not relieve a discharger from complying with the applicable performance standards. 401 KAR 5:055, Section 1.

10. On January 20, 2006, Respondent submitted an NOI requesting permit coverage to KDEP.

11. Part II of the Permit incorporates 401 KAR 5:065 Section 1 by reference.

A. 401 KAR 5:065 Section 1(4) requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.

B. 401 KAR 5:065 Section 1(5) of the Permit requires the Permittee to properly operate and maintain at all times all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

12. Part IV of the Permit requires the Permittee to develop a BMP Plan to assure compliance with the Permit before submittal of the NOI for coverage under the Permit, and to implement the BMP Plan before the initiation of construction activities.

13. Part IV.B(1) of the Permit requires the Permittee to preserve existing vegetation where possible and to stabilize all disturbed areas within fourteen (14) days on areas of the site where construction activities have permanently or temporarily (for twenty-one (21) days or more) ceased.

14. Part IV.B(2) of the Permit requires the Permittee to use silt fences or other equivalent structural practices on all side and down slope borders of the site.

15. Part IV.B(3) of the Permit requires the Permittee to install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow so that the original physical and biological characteristics and functions of the receiving waters are maintained and protected. The installation of management devices may be subject to Section 404 of the CWA.

16. Part IV.C of the Permit requires the Permittee to minimize any off-site vehicle sediment tracking and dust generation.

17. Part IV.E of the Permit requires the BMP Plan to include a clear description of the maintenance procedures necessary to keep the control measures in good and effective operating condition.

18. On October 23-24, 2007, representatives of EPA in conjunction with KDEP performed a Compliance Storm Water Evaluation Inspection ("CSWEL") at Respondent's Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the KDEP Permit.

19. As a result of the CSWEL, EPA, Region 4 has determined that storm water associated with industrial activity was discharged from the Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

20. During the CSWEL, EPA inspectors observed the following:

A. Respondent failed to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment, as required by Part II of the Permit and 401 KAR 5:065 Section 1(4). Sediment-laden runoff was discharging from Sediment Basin No. 2 outfall directly into the unnamed tributary to McCoys Fork. Sediment laden runoff was also entering the unnamed

tributary to McCoys Fork via drainage ditches near the stream culvert crossing on the southern portion of the Development.

B. Respondent failed to properly operate and maintain at all times 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, as required by Part II of the Permit and 401 KAR 5:065 Section 1(5). Silt fencing on Walton Towne Center Drive needed maintenance where sediment-laden storm water was breaching and overtopping the silt fencing. Storm drain inlets off of Walton Towne Center Drive needed proper protection where sediment-laden storm water was entering the inlets. Pipe slope drains were used improperly as an outfall and riser pipe for Sediment Basin No. 2, and did not allow for retention/detention of sediment, causing sediment-laden storm water to enter the unnamed tributary to McCoys Fork.

C. Respondent failed to implement its BMP Plan before the initiation of construction activities, as required by Part IV of the Permit. The only outfall that was consistent with the BMP Plan was that of Sediment Basin No. 2.

D. Respondent failed to preserve existing vegetation where possible and to stabilize all disturbed areas within fourteen (14) days on areas of the site where construction activities have permanently or temporarily (for twenty-one (21) days or more) ceased, as required by Part IV.B(1) of the Permit. Areas near the stream culvert crossing on the southern portion of the Development needed stabilization to prevent sediment from directly entering the unnamed tributary to McCoys Fork.

E. Respondent failed to install silt fences or other equivalent structural practices on all side and down slope borders of the Development, as required by Part IV.B(2) of the Permit. There were many areas where no silt fencing or other equivalent structural practice was installed, including the southern portion of the Development, along Arm Road and the unpaved road behind Arm Road, along the stream crossing, along McCoys Fork and the unnamed tributary to McCoys Fork, around the sedimentation basin, and along the railroad track on the southeastern portion of the Development.

F. Respondent failed to install management devices during construction to control the pollutants in storm water discharges that will occur after construction has been completed, as required by Part IV.B(3) of the Permit. There were no velocity dissipation devices at the outfall to Sediment Basin No. 2 to slow the velocity of the discharges.

G. Respondent failed to minimize off-site vehicle sediment tracking and dust generation, as required by Part IV.C of the Permit. Sediment was observed being tracked onto Arm Road, and the street needed to be cleaned.

H. Respondent failed to include in its BMP Plan a clear description of the maintenance procedures necessary to keep control measures in good and effective operating condition, as required by Part IV.E of the Permit. The BMP Plan did not include schedules of BMP implementation or adequate maintenance procedures.

21. Therefore, Complainant alleges that Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit, and also for discharges not authorized by the Permit.

III. Stipulations and Findings

22. 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.

23. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

25. 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.

26. 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.

27. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

28. 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

29. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that **Forty Thousand Dollars (\$40,000.00)** is an appropriate civil penalty to settle this action.

30. Respondent shall submit payment of the penalty specified in the preceding paragraph via 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, MO 63197-9000.

31. 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, GA 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Programs Enforcement Branch
Water Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960.

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

33. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an

up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

34. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

35. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

36. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

37. 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. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

38. 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.

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

40. 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.

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

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

For Complainant:

Judy K. Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303-8960
(404) 562-9533.

For Respondent:

Gerald F. Dusing, Esq.
Adams, Stepien, Woltermann & Dusing, PLLC
40 W. Pike Street
Covington, Kentucky 41012-0861
(859) 394-6200.

43. 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.


44. 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 Commonwealth of Kentucky was provided prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

45. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

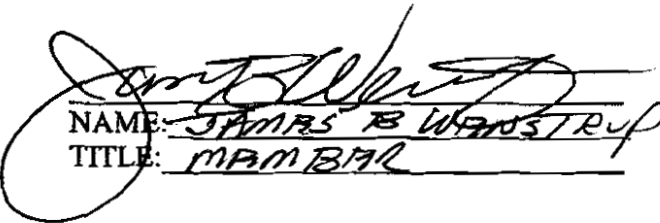
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 8/11/08

For RESPONDENT WALTON LAND DEVELOPMENT, LLC.:



NAME: JAMES B WAISTRUP
TITLE: MEMBER

Date: 7/17/08

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

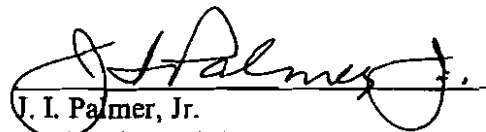
IN THE MATTER OF:)
)
WALTON LAND DEVELOPMENT, LLC) CONSENT AGREEMENT AND
) FINAL ORDER
WALTON TOWNE CENTER)
WALTON, KENTUCKY)
) DOCKET NO. CWA-04-2008-4530(b)
RESPONDENT.)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: SEP 15 2008


J. I. Palmer, Jr.
Regional Administrator

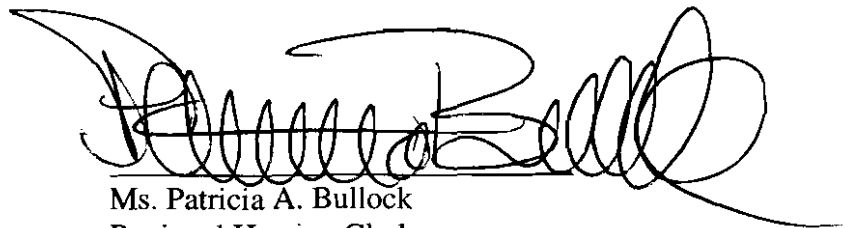
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Walton Land Development, LLC, **Docket No. CWA-04-2007-4530(b)** filed with the Regional Hearing Clerk on SEP 16 2008, 2008, was served on SEP 16 2008, 2008, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall
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: Gerald F. Dusing, Esq.
Adams, Steptoe, Woltermann & Dusing, PLLC
40 W. Pike Street
Covington, Kentucky 41012-0861

Mr. Jeff Cummins, Acting Director
Division of Enforcement
Kentucky Department of Environmental Protection
14 Reilly Road
Frankfort, Kentucky 40601



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox on _____
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Walton Land Development, Ky
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 40,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2008-4530(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: WMD

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|