



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Jeffrey W. Cown, Director

EPD Director's Office
2 Martin Luther King, Jr. Drive SE
Suite 1456, East Tower
Atlanta, Georgia 30334
404-656-4713

Mar 22, 2024

Mr. Rick McCaskill, Executive Director
Development Authority of Bainbridge and Decatur County
P.O. Box 755
Bainbridge, Georgia 39818

RE: Consent Order No. EPD-WP-9499
NPDES General Permit No. GAR100001
Downrange Industrial Park North Expansion Unpermitted Land Disturbance Activity
Decatur County, Georgia

Dear Mr. McCaskill:

This letter is to acknowledge receipt of your signed Consent Order. Enclosed is the final executed copy of the Consent Order.

If you have any questions concerning your compliance status, contact Ms. Lisa T. Myler, with the Southwest District Office, at (229) 430-4144.

Sincerely,

Jeffrey W. Cown

Jeffrey W. Cown
Director

Enclosure: Executed Consent Order
cc: EPD Southwest District Office

**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

IN RE: Mr. Rick McCaskill, Executive Director)
Development Authority of Bainbridge)
and Decatur County)
P.O. Box 755) ORDER NO. EPD-WP-9499
Bainbridge, Georgia 39818)
Decatur County)
Respondent.)

CONSENT ORDER

Authority

WHEREAS, the Development Authority of Bainbridge and Decatur County (the "Respondent") owns the property identified as Parcel 00680010 in Decatur County, Georgia (the "Site") and is responsible for the unpermitted land disturbance activity at the Downrange Industrial Park North Expansion Project (the "Construction Activity"); and

WHEREAS, the Director (the "Director") of the Environmental Protection Division of the Georgia Department of Natural Resources (the "EPD") administers and enforces the "Georgia Water Quality Control Act," O.C.G.A. § 12-5-20 (the "Water Quality Act"); and

WHEREAS, EPD administers and enforces the Rules for Water Quality Control, GA. COMP. R. AND REGS. 391-3-6 (the "Water Quality Rules"), which were promulgated and are in effect pursuant to Water Quality Act; and

WHEREAS, the Water Quality Rules make it unlawful to conduct land disturbance activities without first obtaining coverage under the General Permit No. GAR100001 entitled "Authorization To Discharge Under The National Pollutant Discharge Elimination System Storm Water Discharges Associated With Construction Activity For Stand Alone Construction Projects" (the "Permit"), which became effective on August 1, 2018; and

Civil Penalty

WHEREAS, O.C.G.A. § 12-5-52 provides that any person violating any provision of the Act or any permit condition or limitation established pursuant to the Act or, negligently or intentionally, failing or refusing to comply with any final order of the Director issued as provided in the Act, shall be liable to the State of Georgia for a civil penalty not to exceed \$50,000.00 per day for each day during which such violation continues; provided, however, that a separate and later incident creating a violation within a 12 month period shall be liable for a civil penalty not to exceed \$100,000.00 per day for each day during which such violation continues; and

Development Authority of Bainbridge and Decatur County

WHEREAS, O.C.G.A. § 12-7-15 provides that any person violating any provision of the Act or any rules and regulations adopted pursuant thereto shall be liable for a civil penalty not to exceed \$2,500.00 per day, each day during which the violation continues shall be a separate violation; and

Background

WHEREAS, representatives of EPD conducted an investigation of the Site on February 1, 2024 (the "Investigation"), which revealed that the Construction Activity had disturbed an area in excess of one (1) acre without first obtaining Permit coverage; and

WHEREAS, EPD issued a Notice of Violation letter to the Respondent on February 6, 2024 for the violations documented during the Investigation and requested that the Respondent cease all land disturbance, with the exception of installation and maintenance of Best Management Practices ("BMP's") at the Site; and

Alleged Violations

WHEREAS, the Investigation revealed that the Respondent failed to submit a Notice of Intent for the Site to obtain coverage under the General Permit as required by Section 391-3-6-.16 of the Rules; and

Conditions

WHEREAS, the Director has determined that an amicable disposition of the alleged violations set forth herein is in the best interest of the citizens of the State of Georgia.

NOW THEREFORE, before the taking of any testimony and without adjudicating the merits of the parties' positions, the parties hereby resolve the allegations in this matter upon order of the Director and consent of Respondent as follows:

1. The Respondent shall, within forty-five (45) days of the execution date of this Order, have an Erosion, Sedimentation & Pollution Control Plan (the "ESPCP") prepared for the Construction Activity at the Site by a Georgia Registered Design Professional in accordance with Part IV. of the Permit.
2. The Respondent shall, within fifty (50) days of the execution date of this Order, submit the ESPCP to EPD's Non-Point Source Program for review.
3. The Respondent shall, within fifty (50) days of the execution date of this Order, submit a Notice of Intent for the Construction Activity at the Site through the Georgia EPD Online System ("GEOS"), including all attachments, as required by the Permit.
4. The Respondent shall, within fifty (50) days of the execution date of this Order, submit payment of the associated permit fees for the Site using the ACH payment feature in GEOS or the fee payment form prescribed by the Division to the address indicated on the fee payment form.
5. The Respondent shall, within sixty-five (65) days of the execution date of this Order, fully implement the ESPCP for the Construction Activity at the Site.

6. The Respondent shall, within thirty (30) days of the execution date of this Order, pay the State of Georgia a monetary settlement of \$10,000.00, which will be regarded as a negotiated settlement.

Deadlines

Time is of the essence in this Consent Order. Compliance with any deadline that falls on a Saturday, Sunday or state-recognized holiday shall be by the next business day.

Addresses

All notices, correspondence, etc., from the Director and EPD to Respondent relating to this Consent Order shall be sent to:

Mr. Rick McCaskill, Executive Director
Development Authority of Bainbridge and Decatur County
P.O. Box 755
Bainbridge, Georgia 39819

Respondent shall submit address changes to EPD in written notice sent by certified mail; such notice shall include this Order number.

All correspondence from Respondent to EPD relating to this Consent Order shall be sent to:

Mr. Wen Howell
Southwest District Office
Environmental Protection Division
2024 Newton Road
Albany, Georgia 31701

Public Notice

This Consent Order may be subject to public notice and comment.

Required Submissions

Upon the submission of any reports, plans, schedules, or other information required by any Condition(s) of this Consent Order, EPD shall review the submission to determine its completeness. If EPD determines that the submission is complete, EPD shall notify Respondent in writing that the submission is approved.

If EPD determines that the submission is incomplete, it shall provide Respondent with written notice of the deficiencies. Respondent shall have twenty (20) days from issuance of EPD's notice of deficiency to submit a corrected submission.

All submissions required by this Consent Order are, upon approval by EPD, incorporated by reference into, and made part of, this Consent Order. Any noncompliance with an approved submission shall be deemed noncompliance with this Consent Order.

Approval by EPD of any submission required by this Consent Order is not an agency determination that compliance with any state laws, regulations and/or permits, licenses, etc., will thereby be achieved, but is strictly limited to the completeness of the technical aspects of the submission with regards to the requirements of this Consent Order.

Force Majeure

Failure of Respondent to complete the requirement(s) of any Condition(s), other than payment obligations, by the deadline(s) specified therein may be excused by EPD if 1) Respondent's failure was caused by a force majeure event, and 2) Respondent complies with all notification requirements in this section. Respondent shall have the burden of proving to EPD that it was rendered unable, in whole or part, by the force majeure event to meet the deadline(s).

The term "force majeure event" as used herein shall be limited to the following: an act of war (whether declared or not), including an invasion, act of foreign enemies, or terrorism; a strike, lockout, or other labor or industrial blockade or embargo which is not attributable to any unreasonable action or inaction on the part of Respondent; public riot; specific incidents of exceptional adverse weather conditions or natural disasters such as a hurricane, flood, or earthquake; a fire or explosion affecting the Respondent's operations; failure to secure timely and necessary federal, state, or local approvals or permits, provided approvals or permits have been timely and diligently sought; and any other occurrence caused by unforeseeable circumstances beyond the reasonable control of Respondent, as determined by EPD in its sole discretion.

Within two (2) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall notify EPD verbally or in writing. Within seven (7) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall submit written notice to EPD of the force majeure event, the possible effects, and the anticipated length (if known) of any delay. EPD shall review the submission and negotiate with Respondent regarding the length of the proposed extension of deadlines, if any. The Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

Effect of Order

Respondent consents and the Director executes this Consent Order solely for the purpose of addressing the alleged violations set forth herein. This Consent Order does not relieve Respondent of any obligations or requirements of any statute, rules, permit, or other matter administered by EPD except as specifically authorized herein, which authorization shall be strictly construed. This Consent Order is not a finding, determination, or adjudication of a violation of any state laws, rules, standards and/or requirements, nor does Respondent by consenting to this Consent Order make any admission with respect to any factual allegation contained in this Consent Order or to any liability to any third party.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

Further Enforcement

Failure by Respondent to comply with any provision of this Consent Order may result in further enforcement action. Issuance of this Consent Order does not waive the Director's right to use the violation(s) alleged herein, upon sufficient evidence, to show past violations in any subsequent enforcement proceeding.

Finality

For the purpose of enforcement, this Consent Order constitutes a final order of the Director in accordance with applicable Georgia law. By agreement of the parties, this Consent Order shall be final and effective immediately upon execution by the Director, shall not be appealable, and Respondent does hereby waive all administrative proceedings and judicial hearings on the terms and conditions of this Consent Order.

Electronic Signatures

The parties agree that any electronic signatures on this Consent Order constitute original, valid signatures pursuant to the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1 *et seq.*

It is so ORDERED and CONSENTED TO on the following date Mar 22, 2024.

For the Georgia Environmental Protection Division:

By: Jeffrey W. Cown

Jeffrey W. Cown, Director

For Respondent: Development Authority of
Bainbridge and Decatur County

By: [Signature]

Printed

Name: Rick McCaskill

Title: Executive Director