

PUBLIC NOTICE
U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
WATER PROTECTION DIVISION
NPDES PERMITTING AND ENFORCEMENT BRANCH
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, S.W.
ATLANTA, GEORGIA 30303

DATE: August 5, 2016

PUBLIC NOTICE No. CWA-04-2016-4521(b)

**Notice of Proposed Issuance of
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2016-4521(b) that assesses an administrative penalty of \$12,000.00 to Allstate Paving, Inc. (Respondent), 5284 Patch Road, Orlando, Florida, under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA) 33 U.S.C. § 1319(g)(2)(A).

The CAFO will settle the EPA allegations that the Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the *Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities, National Pollutant Discharge Elimination No. FLR100000*, at its construction site known as Integra Village at Lake Forest, located at 101 Integra Village Trail, Sanford, Seminole County, Florida.

Any person wishing to comment on any aspect of the proposed CAFO may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

Because this matter involves a CWA Section 309(g) proceeding that is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), the EPA cannot resolve or settle this CAFO until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
ALLSTATE PAVING, INC.)	FINAL ORDER
INTEGRA VILLAGE AT LAKE FOREST)	
SANFORD,)	
SEMINOLE COUNTY, FLORIDA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2016-4521(b)
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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 NPDES Permitting and Enforcement Branch of the EPA, Region 4 (“Complainant”).

II. Allegations

3. Allstate Paving, Inc. (“Respondent”) is a corporation duly organized and existing under the laws of the State of Florida and is therefore 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, the Respondent owned and/or operated a construction site known as Integra Village at Lake Forest (“Development”) located at 101 Integra Village Trail, in Sanford, Seminole County, Florida 32771.

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 an 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. The EPA has granted the State of Florida, through the Florida Department of Environmental Protection (“FDEP”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. FDEP issued the Generic Permit for Stormwater Discharge from Large and Small Construction Activities, NPDES Permit FLR100000 (“Permit”) in accordance with the provisions of Section 403.0885, as set forth in the Florida Statutes, and the applicable rules of the Florida Administrative Code, and the CWA. The Permit was effective February 17, 2009. Coverage under the Permit was obtained by submittal of a Notice of Intent (“NOI”) to FDEP.

8. On April 3, 2014, Respondent submitted an NOI to FDEP requesting coverage under the Permit for the Development. The authorization became effective on April 6, 2014, with an expiration date of April 5, 2019, with a project identification number FLR10NW92, and requires Respondent to comply with all provisions of the Permit.

9. On March 25, 2015, the EPA and FDEP performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

10. On April 25, 2015, the EPA sent to the Respondent a Request for Information (RFI) pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, requiring the Respondent to provide information specific to records and documents related to the Permit. On November 5, 2015, the Respondent provided its response to the RFI.

11. As a result of the CSWEI, response to the RFI, and subsequent investigative efforts, the EPA has determined that stormwater associated with construction 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. Stormwater from the Development is collected in a network system of storm drains and enters into the Development’s detention pond. The pond outfall is located at the northern property boundary and discharges into a wetlands area with classification code PFO1/3Cd, and within the Seminole County Municipal Separate Storm Sewer System (MS4). The NOI identifies the receiving waters via the MS4 as the St. Johns River above the Wekiva River, a water of the United States.

12. Based on the CSWEI and review of additional information, the EPA has determined that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit as follows:

- a. Part V.D.4.b of the Permit: *“Based on the results of the inspection, all maintenance operations needed to assure proper operation of all controls, BMPs [Best Management Practice], practices or measures identified in the stormwater pollution prevention plan shall be done in a timely manner, but in no case later than 7 calendar days following the inspection. If needed, pollution prevention controls, BMPs and measures identified in the plan shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.”*
 - i. The self-inspection reports from June 30, 2014 through September 22, 2014 demonstrated that the silt perimeter condition rated as poor. Furthermore, there is no documentation of corrective actions being taken within 7 calendar days of the inspection dates.
 - ii. The self-inspection reports from June 30, 2014 through September 22, 2014 demonstrated that a poor continuous state of conditions existed that required revision and implementation of corrective measures and revision to the stormwater pollution prevention plan (SWPPP). Respondent failed to conduct these actions.
- b. Part V.D.4 of the Permit: *“At least once every seven calendar days and within 24 hours of the end of a storm that is 0.50 inches or greater, a qualified inspector (provided by the operator) shall inspect all points of discharge into surface waters of the State or an MS4...”*
 - i. The inspections conducted on September 8, 18, October 14, November 4, December 11, 22, 2014, January 14, March 6, and April 14, 2015, were not conducted within 7 days from the previous inspection. Specifically, the September 8th inspection was conducted 10 days from the previous inspection, the September 18th inspection was conducted 9 days from the previous inspection, the October 14th inspection was conducted 9 days from the previous inspection, the November 4th inspection was conducted 14 days from the previous inspection, the December 11th inspection was conducted 37 days from the previous inspection, the December 22nd inspection was conducted 11 days from the previous inspection, the January 14th inspection was conducted 23 days from the previous inspection, the March 6th inspection was conducted 51 days from the previous inspection, and the April 14th inspection was conducted 39 days from the previous inspection.

- ii. The inspection reports do not demonstrate points of discharge into surface waters were inspected.
- c. Part V.D.6 of the Permit: *“Certification Statement for Contractors/Subcontractors. All contractors and subcontractors identified in a stormwater pollution prevention plan in accordance with Part V.D.6.a. of this permit shall sign a copy of the following certification statement before conducting any activities at the site:*

“I certify under penalty of law that I understand, and shall comply with, the terms and conditions of the State of Florida Generic Permit for Stormwater Discharge from Large and Small Construction Activities and this Stormwater Pollution Prevention Plan prepared thereunder.”...
 - i. Although the SWPPP contains a certification statement for the contractor, it did not include the certification statement required by the Permit. Furthermore, neither a list of subcontractors nor their certification statements were provided.
- d. Part V.D.2.a(1) of the Permit: *“Stabilization measures shall be initiated as soon as practicable, but in no case more than 7 days, in portions of the site where construction activities have temporarily or permanently ceased.”*
 - i. Inspection reports dated November 4, December 22, 2014, and April 14, 2015, demonstrated that areas were left un-stabilized for more than 7 days. The Seminole County inspection report dated April 16, 2015, also noted un-stabilized areas.
- e. Part V.A of the Permit: *“Facilities must implement the provisions of the stormwater pollution prevention plan required under this part as a condition of this permit.”*
 - i. The SWPPP requires the installation of sediment traps at storm drain inlets. The storm drain inlets had either no sediment traps or improperly maintained traps.
 - ii. The SWPPP requires a double floating turbidity barrier at the detention pond outfall. At the time of inspection, only one floating turbidity barrier was in place.
 - iii. The SWPPP requires a double row of silt fencing along the northern and western property boundaries. At the time of inspection, there was only a single row on the northern boundary and there were no silt fences along the western boundary.

- iv. Failed silt fences were observed throughout the site. Accumulation of sediment was greater than the one third height of the fence allowed by the SWPPP.
 - v. Excessive erosion was observed causing rills and gullies behind Building #4. This erosion is evident of runoff and the failure to use the required BMPs.
 - vi. At the time of inspection, construction waste materials were not in lidded dumpsters as required by the SWPPP.
- f. Part III.C.2 of the Permit: *“A copy of the NOI or letter from DEP confirming coverage under this generic permit shall be posted at the construction site in a prominent place for public viewing...”*
- i. The NOI was not posted at the time of inspection.
- g. Part V.D.1(e) of the Permit: *“A site map indicating...surface waters, wetlands and locations where stormwater is discharged to a surface water or MS4;...”*
- i. The SWPPP did not include a site map that identifies the surface water or MS4.

13. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), due to its failure to comply with the Permit.

14. On August 26, 2015, Respondent submitted a Notice of Termination to FDEP requesting termination of Permit coverage, and the request was acknowledged by FDEP.

III. Stipulations and Findings

15. Complainant and the 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.

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

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

18. The 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.

19. By signing this CA/FO, the 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. The 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.

20. 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.

21. Complainant and the 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

22. 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 twelve thousand dollars (\$12,000) is an appropriate civil penalty to settle this action.

23. The 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 the 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

24. At the time of payment, the 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
NPDES Permitting and Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

26. 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 the 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

27. This CA/FO shall not relieve the 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.

28. 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.

29. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the 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.

30. 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.

31. 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.

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

33. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

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

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

For Complainant:

Wayne Lee
Attorney Adviser
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9523

For Respondent:

Clark Dickson
Project Manager
Allstate Paving, Inc.
5284 Patch Road
Orlando, Florida 32822
(407) 277-5247

36. 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.

37. 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 Florida was provided a prior opportunity to consult with Complainant regarding this matter.

38. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the 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, the 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 the 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

39. 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 the RESPONDENT, ALLSTATE PAVING, INC.:



Clark Dickson, Project Manager
Allstate Paving, Inc.

Date: 7-29-16

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

Denisse D. Diaz, Chief
NPDES Permitting and Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: _____

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
ALLSTATE PAVING, INC.)	FINAL ORDER
INTEGRA VILLAGE AT LAKE FOREST)	
SANFORD,)	
SEMINOLE COUNTY, FLORIDA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2016-4521(b)
_____)	

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: _____

Tanya Floyd
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 **Allstate Paving, Inc., Docket No. CWA-04-2016-4521(b)** (filed with the Regional Hearing Clerk on _____, 2016) was served on _____, 2016, in the manner specified to each of the persons listed below.

By hand-delivery: Wayne Lee
Attorney Adviser
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Clark Dickson
Project Manager
Allstate Paving, Inc.
5284 Patch Road
Orlando, Florida 32822

Jessica Kleinfelter
Program Administrator
Water Compliance Assurance Program
Florida Department of Environmental Protection
Division of Water Resource Management
2600 Blirstone Rd., MS-3550
Tallahassee, FL 32399-2400

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