

Georgia Department of Natural Resources

One Conservation Way, Brunswick, Georgia 31520-8687
Noel Holcomb, Commissioner
Environmental Protection Division
Carol Couch, Ph.D. Director
912/264-7284

FILE COPY

June 09, 2008

Mr. Anthony D. Silva, Owner
16 Valerie Drive
Yonkers, NY 10703

RE: Consent Order EPD-WQ-4915
Young Man Road Property
McIntosh County

Dear Mr. Silva:

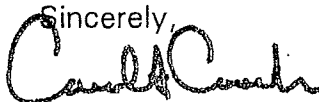
This letter is to acknowledge receipt of the signed Consent Order, and check #1767 in the amount of \$15,000.00 as the first payment of the negotiated settlement specified in the Consent Order. The final payment of \$15,000.00 is to be submitted within 30 days of execution of the Consent Order.

Enclosed is an executed copy of the referenced Consent Order.

We appreciate your commitment to comply with the requirements of the Georgia Water Quality Control Act and the consent order.

If you have any questions concerning your compliance status, please contact, Mr. Darrell Crosby, District Manager, Coastal District office at (912) 264-7284.

Sincerely,



Carol A. Couch
Director

CAC:tg
cc: Foster Lindberg
Attorney at Law

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

IN RE: Anthony D. Silva, Co-owner
Joseph Soares, Co-owner
Young Man Road Site
McIntosh County, Georgia

Order No. EPD-WQ- 4915

CONSENT ORDER

WHEREAS, Mr. Anthony D. Silva and Joseph Soares, co-owners (hereinafter the “Respondents”) are responsible for the land-disturbing activity associated with the property located on Young Man Road in McIntosh County, Georgia (hereinafter the “Site”);

WHEREAS, under the “Erosion and Sedimentation Act of 1975”, as amended O.C.G.A. § 12-7-1 et. seq. (hereinafter “E&S Act”), and under the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et. seq. (hereinafter the “Water Quality Act”), the Georgia General Assembly designated the Director of the Georgia Department of Natural Resources, Environmental Protection Division, (hereinafter “Director” and “EPD”) to administer the provisions of the E&S Act and the Water Quality Act; and

WHEREAS, O.C.G.A. § 12-7-12 of the E&S Act and O.C.G.A. § 12-5-23(c)(12) of the Water Quality Act empower the Director of the EPD to issue Orders as may be necessary to enforce compliance with the provisions of the E&S Act and the Water Quality Act and all Rules and Regulations promulgated there under; and

WHEREAS, the Rules for Water Quality Control, Chapter 391-3-6, (hereinafter “Water Quality Rules”) as amended, as allowed for under O.C.G.A § 12-5-23 of the Water Quality Act

WHEREAS, the Rules for Erosion and Sedimentation Control, Chapter 391-3-7, (hereinafter “E&S Rules”) as amended, as allowed for under O.C.G.A § 12-7-5 of the E&S Act were established and became effective; and

WHEREAS, Chapter 391-3-6.16 of the Water Quality Rules, provides for the issuance of a general permit for the discharge of storm water from construction sites; and

WHEREAS, the General National Pollutant Discharge Elimination System Permit for Storm Water Discharges Associated With Construction Activities, (hereinafter “Permit”) was issued on August 13, 2003. The Permit sets forth the limitations, monitoring requirements and other conditions for the discharge of storm water from construction related activities greater than or equal to one acre respectively; and

WHEREAS, the EPD investigation on April 11, 2007, determined that land disturbing activities were occurring at the Site; and

WHEREAS, the equipment operator on Site stated that the activities were silviculture and therefore exempt from the E&S Act pursuant to O.C.G.A § 12-7-17(6); and

WHEREAS, the Georgia Forestry Commission on August 30, 2007, issued a letter stating work had been done at the Site by the Respondents and was not consistent with normal silvicultural activities and did not qualify for the silviculture exemption under the forestry land management exemption of the E&S Act pursuant to O.C.G.A § 12-7-17(6); and

WHEREAS, Part I, Section D of the Permit requires the submission of a Notice of Intent (hereinafter “NOI”), for coverage under the Permit fourteen days before the commencement of land clearing; and

WHEREAS, a review of EPD records revealed that a NOI was not submitted for land disturbing activities occurring at the site until April 24, 2008; and

WHEREAS, the NOI filed by the Respondents was for a Residential/Subdivision

WHEREAS, Part IV, Section A (6) of the Permit, specifies that in those counties and municipalities, which are not certified "Local Issuing Authority" pursuant to O.C.G.A § 12-7-8 of the E&S Act, a copy of the Erosion, Sedimentation and Pollution Control Plan (hereinafter "ESPCP") shall be submitted to EPD to review for deficiencies in identification of state waters or buffer variance requirements; and

WHEREAS, the ESPCP was submitted to the EPD on April 24, 2008 for review and comment by EPD; and

WHEREAS, Chapter 391-3-6.22, of the Water Quality Rules requires the submittal of fees associated with the Permit; and

WHEREAS, fees have not been submitted to the EPD, and

WHEREAS, on September 7, 2007, the EPD executed an Expedited Enforcement Compliance Order and Stop Work Agreement EPD-WQ-CDO-07-010 (hereinafter "EECO") to resolve these violations; and

WHEREAS, a review of EPD records revealed that the Respondents did not comply with the EECO within the specified forty-five day time frame; and

WHEREAS, O.C.G.A § 12-7-3(16) and Part I, Section B of the Permit define "Waters of the State" as, "any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, wetlands, and all other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation"; and

WHEREAS, O.C.G.A § 12-7-3(2) and Part I, Section B of the Permit define "Buffer" as "the area of land immediately adjacent to the banks of state waters in its natural state of vegetation which facilitates the protection of water quality and aquatic habitat"; and

WHEREAS, O.C.G.A. § 12-7-6 (b)(15) and Part IV of the Permit make it unlawful to conduct land disturbing activities within twenty-five feet of Water of the State without a variance from the Director; and

WHEREAS, pursuant to the Coastal Marshland Protection Act of 1970, O.C.G.A. § 12-5-280, the Coastal Resources Division (hereinafter "CRD") of the Department of Natural Resources determines the Jurisdiction Line (hereinafter "JD Line") where the marsh begins; and

WHEREAS, the JD Line is recognized by the EPD as the point from which the twenty-five foot buffer will be measured; and

WHEREAS, the CRD verified on January 10, 2008 the JD Line at the Site that was surveyed and marked by Respondents' consultants; and

WHEREAS, the EPD investigation on January 10, 2008, determined that the twenty-five foot undisturbed buffer had been breached without a variance; and

WHEREAS, O.C.G.A. § 12-7-15 provides that any person violating any provision of the E&S 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

WHEREAS, O.C.G.A.12-5-52 provides that any person violating any provision of the Water Quality Act or any permit condition or limitation established pursuant to the Water Quality Act shall be liable to the State of Georgia for a civil penalty not to exceed \$50,000 per day for each day during which such violation continues; provided, however, that a separate and later incident creating a violation within a twelve month period shall be liable for a civil penalty not to exceed \$100,000 per day for each day during which such violation continues; and

WHEREAS, an amicable disposition of these allegations concerning the Site is considered to be, for all parties concerned, in the best interest of the citizens of the State of

WHEREAS, the Respondents, in an effort to cooperate with the State of Georgia and to comply with the provisions of the E&S Act and the Water Quality Act, agree to comply with the terms and conditions of this Order.

NOW THEREFORE, the Director hereby ORDERS and the Respondents AGREE and CONSENT to comply with the following:

1. The Respondents agree to pay to the State of Georgia upon execution of the Order, the sum of thirty thousand dollars (\$30,000). The Respondents will immediately submit fifteen thousand dollars (\$15,000) and the remaining fifteen thousand dollars (\$15,000) within thirty (30) days of the execution date of this Order.
2. Within fifteen (15) days of the execution date of this Order, the Respondents shall remit all Permit fees due for the land disturbing activities at the Site to the State of Georgia Department of Natural Resources.
3. Within fifteen (15) days of the execution date of this Order, the Respondents shall submit to the Division for concurrence a buffer restoration plan to restore the buffer to its natural state, prepared by a Georgia licensed design professional or consultant. The design professional or consultant shall be someone who is knowledgeable with buffer restoration. The plan shall contain but not be limited to the following:
 - a. Areas that have been impacted by fill; mechanical land clearing or excavation at the Site shall be restored to pre-existing elevations or an elevation similar to that of the surrounding buffer areas. This portion of the plan shall specify how contours are to be restored, maintained, and stabilized to prevent further erosion at the Site.
 - b. After restoration of elevations within the buffer, the plan shall stipulate how the impacted buffer areas will be replanted in native hardwood species or other native

- vegetation. The plan shall include height and spacing specifications for bare root stock plantings and maintenance/monitoring plans until vegetation is established.
- c. A time schedule for restoration activities in the buffer including grading, planting and maintenance.
 - d. A contingency plan in the case that the restoration is deficient in meeting functional replacement objectives. The Respondents shall provide supplemental mitigation necessary to offset this deficiency.
4. Within five (5) days of the execution date of this Order, the Respondents shall install all Best Management Practices required according to the Erosion, Sedimentation and Pollution Control Plan and the Georgia Soil and Water Conservation Commission Manual for Erosion and Sediment Control in Georgia (Green Book).
 5. Within thirty (30) days of EPD written concurrence with the buffer restoration plan, the Respondents shall implement the buffer restoration plan and restore the natural vegetation to the twenty-five foot buffer.
 6. Within forty-five (45) days of EPD written concurrence with the buffer restoration plan, the Respondents shall submit to the Division a letter prepared by the Georgia licensed design professional, certifying that the Site has been brought into compliance with all applicable conditions of the Permit.

The parties agree that this Consent Order supercedes and will replace Expedited Enforcement Compliance Order EPD-WQ-CDO-07-010 and that Expedited Enforcement Compliance Order EPD-WQ-CDO-07-010 will be null and void and have no further legal effect or use.

This Consent Order shall not constitute a finding or adjudication of a violation of any State law by the Respondents, nor do the Respondents, by their consent, agree to any violation of State law or admit any liability to any third party or parties.

THE DIRECTOR FURTHER ADVISES THAT this Order does not constitute a waiver or imply that EPD will not take appropriate enforcement action against the Respondents for failure to: 1) fully satisfy the conditions set forth above, or 2) fully comply with other relevant statutory, regulatory, or other legal requirements imposed upon the Respondents. By AGREEMENT of the parties, this ORDER shall be considered final and effective immediately, and shall not be appealable, and the Respondents do hereby waive any hearing on the terms and conditions of same or any portion thereof.

It is so ORDERED, CONSENTED, and AGREED this 5th day of June 2008.

FOR THE RESPONDENTS:

By: *Anthony Silva*

Title: Owner

Date: _____

FOR THE DIVISION:

Carol A. Couch

Carol A. Couch
Director

By: *Joseph J. Sauer*

Title: Owner

Date: _____