



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Interim Secretary

June 16, 2021

Sent electronically to: michael@maerconstruction.com

Ms. Erika Rae Gonzalez, Manager
MAER Homes, LLC
410 Blanding Boulevard, Suite 10 #259
Orange Park, Florida 32073

RE: Florida Department of Environmental Protection vs. MAER Homes, LLC
Willow Branch Canal Rehabilitation Phase II - Permit ID: FLR20DN74
OGC File Number: 21-0455
Duval County – NPDES Stormwater Enforcement


Dear Ms. Gonzalez:

Enclosed is the Consent Order to resolve the issues in the subject OGC File. Please review the Consent Order and, if you find it acceptable, sign and return the original document to this office within 14 days of the date of this letter.

If you wish to modify the Consent Order, please respond to this office in writing within 14 days of the date of this letter, explaining your concerns including any proposed changes.

If you have any questions concerning the Consent Order, please contact Sally Logan by phone at (904) 256-1634, or via email at Sally.Logan@FloridaDEP.gov. Your continued cooperation in the matter is greatly appreciated.

Sincerely,


James R. Maher, PE
Assistant Director

ec: FDEP-NED: Sally Logan, Heather Webber, Arlene Wilkinson
Michael Gonzalez, MAER Construction - michael@maerconstruction.com
Steve Gonzalez, MAER Construction - steve@maerconstruction.com
Reid Harriett – rharriett@via-cs.com
City of Jacksonville - Daryl Weinstein - DWeinstein@coj.net

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 21-0455
)	
MAER HOMES, LLC)	
_____)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and MAER Homes, LLC ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds, and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("Fla. Stat."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("Fla. Admin. Code.") The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent is the owner of MAER Homes, LLC, a construction company with a principal address of 2753 Rosselle Street, Jacksonville, Florida, 32205 ("Facility").
4. On March 23, 2020, Respondent submitted a Notice of Intent to use the "*Generic Permit for Stormwater Discharge from Large and Small Construction Activities*" ("NPDES Stormwater CGP") to the Department in order to conduct construction activities at Willow Branch Avenue, Jacksonville, Florida, Duval County, approximate Latitude 30° 18' 13.01" North, Longitude -81° 41' 44.84" West. Respondent is the General Contractor overseeing the construction activities at the location addressed in the NPDES Stormwater CGP ("Property").
5. On March 26, 2020, the Department issued a NPDES Stormwater CGP and assigned project identification number FLR20DN74 ("Permit") to the Property.

6. Between October 14, 2020 and January 20, 2021, Department personnel conducted multiple inspections and observed the following violations at the Property:

a) Turbid water was discharged from the Property ; the discharged water exceeded water quality standards, as shown in Table 1 below in violation of Rules 62-302.500(1)(a)(3) and 62-302.530(70), Fla. Admin. Code.

Table 1 - Turbidity Sampling for Willow Branch Canal

Sample Date	Upstream (Background)	Point of Discharge	Downstream (Outside curtain)
10/16/2020	15 NTU	75 NTU	70 NTU
10/27/2020	8.9 NTU	32 NTU	60 NTU
1/20/2021	8.4 NTU	250 NTU	110 NTU

b) The project site had insufficient and improperly installed Best Management Practices (“BMPs”) on-site, pursuant to NPDES Generic Permit Condition Part 5, Permit Number FLR20DN74, and Rule 62-621.260(2), Fla. Admin. Code.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is **ORDERED**:

7. Within 30 days of the effective date of this Order, Respondent shall conduct a Root Cause Analysis (“Analysis”) of the continuing turbidity problems and BMP failures in service of improving and updating the Stormwater Pollution Prevention Plan (“SWPPP”).

8. Within 30 days of completion of the Analysis, Respondent shall submit a revised SWPPP with the edits made as a result of the Analysis clearly marked. The Department will review the revised SWPPP and notify the Respondent of any requested edits. The revised SWPPP shall be implemented within 30 days of submittal of the revised SWPPP, or by a date agreed upon by both the Department and Respondent after Department review of the revised SWPPP.

9. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$10,250.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$9,750.00 for civil penalties and \$500.00 for costs and expenses incurred by

the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes three violations that each warrant a penalty of \$2,000.00 or more.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 7 through 9 of this Order. Respondents also agree to pay the Department stipulated penalties for each and every turbidity violation that occurs after the effective date of this Order in accordance with the following schedule:

Turbidity sample results	Stipulated Penalty
29 NTUs or greater, but less than 50 NTUs, above background	\$7,500.00
Greater than 50 NTUs above background	\$10,000.00

Each day constitutes a separate violation. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 12, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 10 of this Order.

11. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Department of Environmental Protection, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

13. Respondent shall allow all authorized representatives of the Department access to the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

14. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

15. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional

measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

16. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

17. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

19. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

20. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, Fla. Stat.

21. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

22. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

23. This Consent Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

24. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida, 32399-3000, or received via electronic correspondence at Agency_Clerk@FloridaDEP.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Florida Statutes, and Rule 62-110.106(12), Florida Administrative Code.

25. Rules referenced in this Order are available at:
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:

Erika Rae Gonzalez, Manager
MAER Homes, LLC

Date

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ____ day of _____ 2021, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gregory J. Strong
District Director
Northeast District

Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to: FDEP-OGC: Lea Crandall, Agency Clerk, Mail Station 35