



# FLORIDA DEPARTMENT OF Environmental Protection

Northwest District  
160 W. Government Street, Suite 308  
Pensacola, FL 32502

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

July 28, 2022

Gary W. Radford, Managing Member  
Radford and Nix Construction, LLC  
7014 Pine Forest Road  
Pensacola, Florida 32526  
([gwradford@aol.com](mailto:gwradford@aol.com))

Dear Mr. Radford:

The purpose of this letter is to transmit Executed Consent Order, OGC #22-1725 concerning property located at 30°31'53.73, -87°17'49.23, Parcel ID# 12-1S-31-1100-010-001 in Escambia County, Florida. Thank you for your quick response to the Department's proposed resolution of this matter.

Please note the requirements of the Order for which you are responsible and fulfill all pertinent actions accordingly. Unless otherwise noted, all deadlines for completing requirements and actions in the Order are to be calculated from its effective date, which is the date the Order was filed with the Department Clerk, as noted on the signature page.

Your continued cooperation in resolving this matter is appreciated. If you have any questions, please call Trevor Bostwick at (850) 595-0624 or at [Trevor.Bostwick@FloridaDEP.gov](mailto:Trevor.Bostwick@FloridaDEP.gov).

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr  
Director  
Northwest District

Encl: Executed Consent Order OGC#22-1725

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION	)	IN THE OFFICE OF THE NORTHWEST DISTRICT
	)	
Complainant,	)	
	)	
vs.	)	OGC FILE NO. 22-1725
	)	
Radford and Nix Construction, LLC	)	
	)	
Respondent.	)	
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CONSENT ORDER

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

The Department finds and the 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, and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is an active Florida Limited Liability Company registered to do business in the state of Florida with its principal place of business located at 7014 Pine Forest Road Pensacola, Florida 32526

3. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.

4. On January 5, 2021, Respondent submitted a Notice of Intent (NOI) 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 the Evergreen Bearing Apartments site, Pensacola Florida, Escambia County, approximate Latitude 30°31'53.73" North, Longitude -87°17'49.23" West (project site).

5. On January 5, 2021, the Department issued a letter to the Respondent verifying the NPDES Stormwater CGP and assigned project identification number FLR10UA74 (Permit) to the project site.

6. The Department finds that Respondent violated Section 403.161(1)(b) Fla. Stat. by not complying with the terms of the Permit. Specifically, on October 14, 2021, Department personnel visited the project site and observed that the Best Management Practices (BMPs) required by Part 5 of the Permit had not been maintained and were inadequate. BMPs were not preventing offsite sedimentation, in violation of the Permit. Additionally, the Stormwater Pollution Prevention Plan (SWPPP) did not meet Part 4 of the Permit requirements as the SWPPP had not been updated to match current BMP's onsite.

Having reached a resolution of the matter, Respondent and the Department mutually agree and it is,

**ORDERED:**

7. Within 120 days of the effective date of this Consent Order, Respondent shall pay the Department \$ 24,657.57 in settlement of the regulatory matters addressed in this Consent Order. This amount includes \$ 500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. This \$ 500.00 amount shall be paid within 30 days of the Effective Date of this Agreement. The total remaining payment shall be made in four installments. The first installment payment of \$ 6,039.40 shall be due on August 20, 2022. The second payment of \$ 6,039.39 shall be due on September 19, 2022, within 30 days of the first payment. The third payment of \$ 6,039.39 shall be due on October 19, 2022, within 30 days of the second payment. The fourth payment of \$ 6,039.39 shall be due on November 18, 2022, within 30 days of the third payment.

8. 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 and effective filed with the Clerk of the Department before ability to make online payment is available.

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Assistant District Director, Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, Florida 32502.

10. Within 30 days of the effective date of this order, and until Final Stabilization has been achieved as defined in Part 8 of the FLR10UA74 Permit, Respondent shall take all necessary actions to ensure compliance with the Permit. Necessary actions may include but not be limited to deployment of an on-site manager delegated with necessary authority to achieve and maintain compliance described herein.

11. Within 30 days of the effective date of this order, Respondent shall submit its updated Stormwater Pollution Prevention Plan ("SWPPP") as defined in Part 8 of the Permit to the Department for its approval. The SWPPP shall include all required elements listed in the Permit. Additionally, the SWPPP shall include Respondent's plans to remove sediment from the on-site/off-site discharge, including the Eight Mile Creek Outfall, The Crossings at Milestone Apartment complex, FDOT, and Escambia County MS4 Stormwater culverts, Stormwater ponds and ditch system and any adjacent stormwater infrastructures that have been affected by sedimentation from the project site. Upon approval, the SWPPP shall become an enforceable part of this Consent Order.

12. Within 60 days of the effective date of this Order, Respondent shall perform an assessment of all drainage paths to the Eight Mile Creek Outfall Wetland from the site to include The Crossings at Milestone Apartment complex, FDOT, and Escambia County MS4 Stormwater culverts, Stormwater ponds and ditch system so further impacts can be documented. The assessment shall evaluate for sediment resulting from erosion of the project site and its effect on the systems. Within 15 days of the completion of the assessment, the Respondent shall submit to the Department the results of the assessment. The Department shall review the assessment and either approve or request additional information or evaluation. The Respondent shall respond to any request for additional information by the Department within 15 days of any such request. Within 15 days of

approval of the assessment, Respondent shall submit a restoration plan to the Department to restore any areas found to have environmental impacts as a result of the Respondent's activities. The Department shall review the restoration plan and either approve the plan or request additional measures be taken. The Respondent shall respond to any request for additional information by the Department within 15 days of any such request. Respondent shall complete restoration actions in accordance with the approved plan within 120 days of approval.

13. 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 paragraph 10 - 13 of this Consent Order. Respondent agrees to pay the Department stipulated penalties in the amount of \$ 6,000.00 for any failure to install, implement, or maintain its Best Management Practices contained within its approved SWPPP at the project site.

Each distinct location and each day constitutes a separate violation. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "State of Florida Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 7 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

14. This Order shall remain in effect until all costs and expenses have been paid and until the construction project site has reached Final Stabilization and sediment has been removed from any adjacent stormwater infrastructure and waterbody that have been affected by sedimentation from the project site. Final Stabilization means that all soil disturbing activities at the site have been completed, and that for all unpaved areas and

areas not covered by a permanent structure, a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% have been established or equivalent permanent stabilization measures (e.g., geotextiles) have been employed.

15. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 10-16 within 1 year of the effective date of this Order and be in full compliance with Rule 62-621.300(4), Florida Administrative Code, regardless of any intervening events or alternative time frames imposed in this Order.

16. 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.

17. 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 the terms of this Order.

18. 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.

19. 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.

20. 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 \$ 10,000.00 per day per violation, and criminal penalties.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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, Fla Stat. 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.

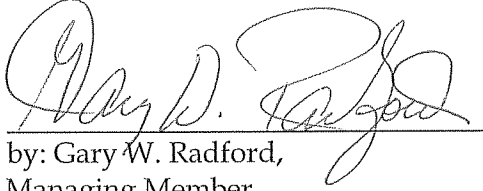
The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 160 W. Government St. Suite 308 Pensacola, Florida. 32502. 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, Fla Stat. 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, Fla Stat. 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, Fla Stat. and Rule 62-110.106(12), Florida Administrative Code.

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



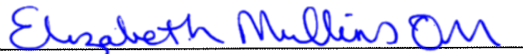
FOR THE RESPONDENT:  
Radford and Nix Construction, LLC

07/25/2022  
DATE

  
by: Gary W. Radford,  
Managing Member

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 2022, in  
\_\_\_\_\_ County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Elizabeth Mullins Orr,  
Director  
Northwest 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:  
Lea Crandall, Agency Clerk  
Mail Station 35