

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:	)	Docket No. CWA-04-2007-5173(b)
	)	
Waste Management of Carolinas, Inc.	)	
d/b/a WM of the Piedmont	)	CLEAN WATER ACT
2859 West Paces Ferry Road, Suite 1600	)	SECTION 311 CLASS II
Atlanta, GA 30339	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
<u>Respondent.</u>	)	UNDER 40 C.F.R. § 22.13(b)

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This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 4 who in turn has delegated these authorities to the Director of the RCRA Division of EPA Region 4, pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A (“Complainant”).

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Waste Management of Carolinas, Inc., d/b/a WM of the Piedmont, (“Respondent”) is a corporation organized under the laws of North Carolina with its registered office located at c/o CT Corporation 225 Hillsborough Street, Raleigh, NC 27603. The Respondent is a “person” within

the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

2. The Respondent is the owner or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a solid waste hauling facility (“facility”), called the Glen Avenue Hauling Facility, located at 3303 North Glen Avenue, Winston-Salem, North Carolina.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Bowen Branch Creek is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Respondent admits the jurisdictional statements contained herein.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On August 17, 2006, Respondent discharged 6,544 gallons of oil (diesel fuel), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility, with up to 4,908 gallons discharged into or upon Bowen Branch Creek and/or its adjoining shorelines.

9. Respondent's August 17, 2006 discharge of oil from its facility into or upon Bowen Branch Creek caused a sheen upon or discoloration of the surface of Bowen Branch Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

### **Waiver of Rights**

10. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

**Penalty**

12. The Complainant proposes, after acknowledgment of Respondent's material and prompt oil recovery and remedial efforts, and Respondent consents to, the assessment of a civil penalty of \$20,000.

**Payment Terms**

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$20,000 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF § 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, PA 15251

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center  
ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

If paying by EFT, the Respondent shall transfer \$20,000 to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

In the case of an international transfer of funds, the Respondent shall use SWIFT address MELNUS3P.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Doug McCurry  
U.S. Environmental Protection Agency  
Region 4  
Chief, North RCRA and OPA Enforcement and Compliance Section  
RCRA Division  
61 Forsyth St., S.W.  
Atlanta, GA 30303

15. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

16. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a

Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.


19. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

**Effective Date**

20. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.


**Waste Management of Carolinas, Inc.  
d/b/a WM of the Piedmont**

Date: 8/1/07

Signature:   
Name: GREG YORSTON  
Title: M.A.V.P

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/8/07

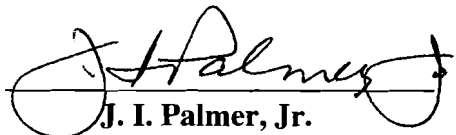
Signature:   
G. Alan Farmer  
Director  
RCRA Division

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and 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,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: 9/19/07

  
**J. I. Palmer, Jr.**  
**Regional Administrator**



CERTIFICATE OF SERVICE

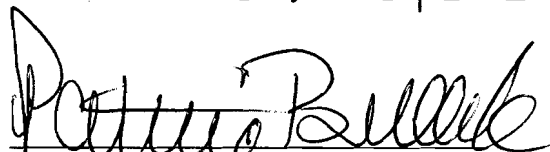
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE AND CORRECT COPY OF THE Foregoing Consent Agreement and Final Order, in the Matter of Waste Management of the Carolinas, Inc. d/b/a WM of the Piedmont, Docket No. CWA-04-2007-5173(b), on the parties listed below in the manner indicated:

Joan Redleaf Durbin, Associate Regional Counsel (Via EPA Internal Mail)  
Office of Environmental Accountability  
U.S. Environmental Protection Agency – Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Jeffery W. Burris, Senior Legal Counsel (Via Certified Mail,  
Waste Management Return Receipt Requested)  
2859 Paces Ferry Road, Suite 1600  
Atlanta, GA 30339

Douglas McCurry, Chief (Via EPA Internal Mail)  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency – Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

Dated this 20 day of September, 2007.



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Nancy Macee on 9/10/07  
(Name) (Date)

in the RCRA/OPA Enforcement at (404) 562-8674  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Waste Management of the Carolinas, Inc.  
d/b/a WM of the Piedmont  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 20,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-5173(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

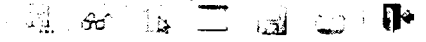
- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |

**Certified Mail Tracking System**

File Data Entry Reports Search Window Help



Enter New Record (Only SiteID and SiteName can be Blank)

**New Certified Mail Record**

Date: 09/10/2007

Certified No.: 7005116000198999225

To: JEFFREY W. BURRIS WASTE MANAGEMENT OF CAROLINAS

Street: 2859 WEST PACES FERRY ROAD, SUITE 1600

City: ATLANTA State: GA Zip Code: 30339

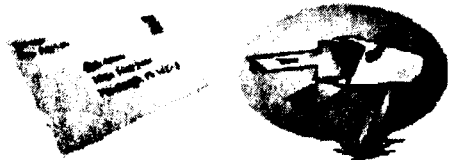
Sender: DURBIN-REDLEAF, JOAN Ext: 29544  
(LastName, FirstName Middle Initial)

Division: DEA Floor: 13

Building: AFC Unit: RCRA/FF/UST/OPA

Alternate: THOMPSON, SHARON Alternate Ext: 29507  
(LastName, FirstName Middle Initial)

Site Name: Site ID:



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Sent To	Jeffrey W. Burris Senior Legal Counsel Waste Management of Carolinas 2859 West Paces Ferry Road Suite 1600 Atlanta, GA 30339	
Street, Apt. No., or PO Box No.		
City, State, ZIP+4		

Certified Mail Trackin...

7005 1160 0001 9899 9225