



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**JUL 20 2010**

**CERTIFIED MAIL** 7006 0810 0004 1131 0363  
**RETURN RECEIPT REQUESTED**

Alfred F. Smith, Esq.  
Bainbridge, Mims, Rogers, and Smith, LLP  
The Luckie Building, Suite 415  
600 Luckie Drive  
Birmingham, Alabama 35223

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2010-4515(b)  
Brooke's Crossing Subdivision  
Trussville, Alabama

Dear Mr. Smith:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV Penalty.

Should you have any questions or concerns, please contact Humberto Guzman at (404) 562-9794.

Sincerely,

*Christopher L. Pymale for*  
César A. Zapata, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: ADEM  
Chip Street, Brooke's Crossing, LLC

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
<b>BROOKE'S CROSSING, LLC</b>	)	
<b>BROOKE'S CROSSING SUBDIVISION</b>	)	<b>DOCKET NO. CWA-04-2010-4515(b)</b>
<b>TRUSSVILLE, ALABAMA</b>	)	
	)	
<b>RESPONDENT.</b>	)	
<hr/>		

EPA REGION 4  
2010 JUL 20 AM 7:00  
HEARING CLERK

**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. 40176 (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 ("EPA"). 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 who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 ("Complainant").

**II. Allegations**

3. Brooke's Crossing, LLC ("Respondent"), is a limited liability corporation formed under the laws of the State of Alabama and is 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, Respondent owned and/or operated a construction site known as Brooke's Crossing Subdivision ("Development") located across Vann Road on U.S. Highway 11 in Trussville, Alabama

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 EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. Pursuant to Section 402(b) of the CWA, EPA has granted the State of Alabama, through the Department of Environmental Management (“ADEM”), approval to administer the NPDES program.

7. ADEM issued Administrative Code Chapter 335-6-12, *National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities* (“Permit Regulations”), in accordance with Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 and 22-22A-16 et seq., as amended, effective March 1, 2003, and revised on September 19, 2006. Regulated facilities must submit a Notice of Registration (“NOR”) requesting coverage under the Permit Regulations, and must submit an NOR each year thereafter to maintain coverage unless another length of time (not to exceed five years) has been approved by ADEM. The Permit Regulations also require that a Construction Best Management Practices Plan (“CBMPP”), designed to minimize pollutant discharges in storm water runoff to the maximum extent practicable during land disturbance activities, be submitted, fully implemented and effectively maintained.

8. The ADEM Water Division is responsible for the approval of coverage under the Permit Regulations, upon submission of the NOR and CBMPP.

9. On February 28, 2008, Respondent submitted to ADEM an NOR and CBMPP requesting permit coverage for the Development. A Notice of Coverage was sent to Respondent with an effective date of March 5, 2008 and an expiration date of February 28, 2009.

10. Part 335-6-12-.05(5) of the Permit Regulations requires the posting and maintenance of signs to adequately identify the site. Signs shall display the name of registrant, “ADEM Registration” followed by the ADEM NPDES registration number, and facility or site name.

11. Part 335-6-12-.06(4) of the Permit Regulations requires that all reasonable steps be taken to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharges.

12. Part 335-6-12-.15(2) of the Permit Regulations requires that all required records be kept at the construction site or at an alternative site previously identified to ADEM, provided they are readily available for inspection upon request.

13. Part 335-6-12-.21(5)(a) of the Permit Regulations requires that Best Management Practices (“BMPs”) are fully implemented and regularly maintained.

14. Part 335-6-12-.26(4) of the Permit Regulations requires measurement and recording of precipitation.

15. On January 13, 2009, representatives of EPA, in conjunction with ADEM, performed a Compliance Storm Water Evaluation Inspection (“CSWEI”) at Respondent’s Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the ADEM Permit Regulations.

16. As a result of the CSWEIs, EPA determined that storm water associated with industrial 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.

17. During the CSWEIs, EPA inspectors observed the following:

- A. A sign was not posted at the front entrance to the Development, as required by Part 335-6-12-.05(5) of the Permit Regulations.
- B. All reasonable steps were not taken to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water, as required by Part 335-6-12-.06(4) of the Permit Regulations. Sediment was observed in Pinchgut Creek from an outfall and from a drainage ditch located on the southern end of the Development.
- C. The CBMPP and inspection records were not kept at the Development or at an alternative site previously identified to ADEM, as required by Part 335-6-12-.15(2) of the Permit Regulations.
- D. Best Management Practices were not fully implemented and fully maintained, as required by Part 335-6-12-.21(5)(a) of the Permit Regulations. Erosion is occurring due to the lack of soil stabilization; the silt fences had not been maintained; inlet protection had not been maintained; and the drainage ditch was a sediment conduit to Pinchgut Creek.
- E. A rain gauge was not present at the Development to measure and record precipitation, as required by Part 335-6-12-.26(4) of the Permit Regulations.

18. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the ADEM Permit Regulations; and also for discharges not authorized by the ADEM Permit Regulations.

### **III. Stipulations and Findings**

19. Complainant and 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.

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

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

22. 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.

23. By signing this CA/FO, 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. 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.

24. 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 Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

25. Complainant and 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**

26. 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, EPA has determined that **Seven Thousand Five Hundred Dollars (\$7,500.00)** is an appropriate civil penalty to settle this action.

27. Respondent shall submit payment of the penalty specified in the preceding paragraph via 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 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

28. At the time of payment, 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

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Clean Water Enforcement Branch  
Water Protection Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

30. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

31. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject 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**

32. This CA/FO shall not relieve 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 EPA.

33. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

34. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and 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. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

35. 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.

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

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

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

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

For Complainant:

Judy K. Marshall  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9533

For Respondent:

Alfred F. Smith, Esq.  
Bainbridge, Mims, Rogers, and Smith, LLP  
The Luckie Building, Suite 415  
600 Luckie Drive  
Birmingham, Alabama 35223

40. 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 consent agreement and proposed final order based on comments received during the public comment period.

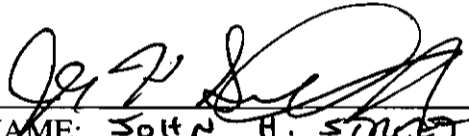
41. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Alabama was provided prior opportunity to consult with Complainant regarding this matter.

#### **VI. Effective Date**

42. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

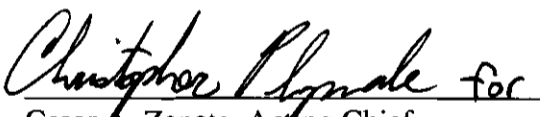
#### **AGREED AND CONSENTED TO:**

**For RESPONDENT BROOKE'S CROSSING, LLC:**

  
NAME: Solt N. H. STREET JR  
TITLE: MEMBER

Date: 5/25/10

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
Cesar A. Zapata, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: 6/4/10



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

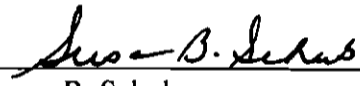
<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
<b>BROOKE'S CROSSING, LLC</b>	)	
<b>BROOKE'S CROSSING SUBDIVISION</b>	)	<b>DOCKET NO. CWA-04-2010-4515(b)</b>
<b>TRUSSVILLE, ALABAMA</b>	)	
	)	
<b>RESPONDENT.</b>	)	
_____	)	

**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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Date: July 19, 2010

  
\_\_\_\_\_  
Susan B. Schub  
Regional Judicial Officer

CWA-04-2010-4515(b) filed with the Regional Hearing Clerk on JUL 20 2010, was served on JUL 20 2010, in the manner specified to each of the persons listed below.

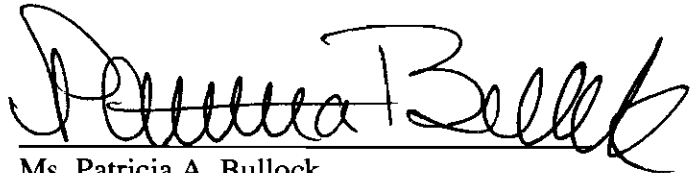
By hand-delivery:

Judy K. Marshall  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested:

Alfred F. Smith, Esq.  
Bainbridge, Mims, Rogers, and Smith, LLP  
The Luckie Building, Suite 415  
600 Luckie Drive  
Birmingham, Alabama 35223

Vernon H. Crockett  
Chief, NPDES Enforcement Branch  
Alabama Department of Environmental Management  
P. O. Box 301463  
Montgomery, Alabama 36130-1463



Ms. 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

**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: Mary Mattox on 6/2/10  
(Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733  
(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: Bewte's Crossing LLC, Trussville, AL  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7,500  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4515(b)

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

Water Protection Division

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

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

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

**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)    |

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM  
PROGRAM SPECIFIC INFORMATION  
PROGRAM: \_\_\_\_\_**

Case Docket Control Number: CWA 04-2010-4515(b)

Total Amount Due: \$ 7,500

Full payment due 30 days after issuance date of signed CAFO

Installment payments to be paid:

Amount Due:

Date Due:

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_