



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2015

CERTIFIED MAIL 7014 2870 0000 3318 3401  
RETURN RECEIPT REQUESTED

Mr. Paul Stevenson  
Plant Manager  
Ennis Paint, Inc  
1855 Plymouth Road, N.W.  
Atlanta, Georgia 30318

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2015-4508(b)  
Ennis Paint, Inc., Atlanta, Fulton County, Georgia

Dear Mr. Stevenson:

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 Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or problems, please contact Mr. Ahmad Dromgoole at (404) 562-9212 or via email at [dromgoole.ahmad@epa.gov](mailto:dromgoole.ahmad@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Denisse D. Diaz".

Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosure

cc: Mr. James Capp  
Georgia Environmental Protection Division

Mr. Bert Langley  
Georgia Environmental Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>ENNIS PAINT, INC.</b>	)	<b>FINAL ORDER</b>
<b>ATLANTA, GEORGIA</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>DOCKET NO. CWA-04-2015-4508(b)</b>
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RECEIVED  
MAY 13 2015  
10:00 AM  
REGIONAL OFFICE  
ATLANTA, GA

**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. 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 of the EPA, Region 4, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. Ennis Paint, Inc. (“Ennis Paint” or “Respondent”) is a corporation duly organized and existing under the laws of the State of Texas and is therefore 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, the Respondent owned and/or operated a plastic coating manufacturing facility (“Facility”), as identified by Standard Industrial Classification (“SIC”) Code 2851, located at 1855 Plymouth Road, NW, Atlanta, Georgia 30318.

5. The Facility is located on an approximately 5.2 acre tract of land. The Facility consists of the 98,000 square foot building which includes the manufacturing process and offices (referred to herein as the “main building”), a 1,000 square foot three sided storage shed, a 176

square foot compressor building, and an outdoor product and raw material storage area. Stormwater drains are located throughout the Facility including in the employee parking area on the west side of the main building and in the outdoor storage areas along the north and east sides of the main building.

6. 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.

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Georgia, through the Georgia Environmental Protection Division ("GAEPD"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

8. The GAEPD issued the *Georgia Storm Water Discharges Associated with Industrial Activity*, Permit No. GAR050000, ("Permit") in accordance with the Georgia Water Quality Control Act of 1964 (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964). The Permit became effective on June 1, 2012, and will expire on May 31, 2017.

9. The GAEPD is responsible for the issuance, compliance and enforcement of the Georgia Water Quality Control Act of 1964 (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent ("NOI") requesting coverage.

10. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a NPDES permit is required for any "stormwater discharge associated with industrial activity."

11. "Stormwater discharge associated with industrial activity," as defined at 40 C.F.R. § 122.26(b)(14), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directing related to manufacturing, processing or raw materials storage areas at an industrial plant.

12. Pursuant to 40 C.F.R. 122.26(b)(14)(xi), facilities under SIC Code 2851 are considered to be engaging in "industrial activity" for the purposes of 40 C.F.R. 122.26(b)(14).

13. Stormwater associated with industrial activity was generally discharged from the Facility through both the outfall at the northwest corner of the site and through sheet flow along various areas of the site. Both types of discharge go to the City of Atlanta Municipal Separate Storm Sewer System (“MS4”), which ultimately discharges to Proctor Creek.

14. Proctor Creek is a tributary to the Chattahoochee River, which is a “navigable water” and a “water of the United States” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2.

15. On January 29, 2015, representatives of the EPA, in conjunction with the GAEPD and the City of Atlanta, performed a Compliance Inspection (“CI”) at the Facility to evaluate the Respondent’s compliance with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26; and the Permit.

16. The Respondent’s responsible official, Paul Stevenson, met with the EPA inspectors on-site, and provided a Facility tour and the Respondent’s permit history.

17. During the CI, the EPA observed the following:

- a. The Facility has several industrial areas with exposure to stormwater runoff, including truck parking, raw material storage, product storage, air pollution control equipment, and waste disposal areas.
- b. The Respondent failed to properly submit a NOI requesting coverage under the June 1, 2012 Permit.
- c. All of the requirements of the SWPPP had not been met by the Facility.
- d. All of the record keeping requirements of the Permit had not been met by the Facility.
- e. SWPPP housekeeping deficiencies were observed at various areas of the site. Examples of this include areas of the facility in need of sweeping and various Best Management Practices (“BMPs”) in need of maintenance such as missing or damaged filter cloths in storm drain inlets, failed containment of spilled oil in the compressor building, and drainage valves at secondary containment structures being left open.

18. On February 26, 2015, the EPA issued a Letter of Concern to the Respondent, requesting that the Respondent provide information verifying that the deficiencies identified in the CI report pertaining to the SWPPP, record keeping requirements, and housekeeping and maintenance requirements were addressed. Additionally, EPA requested verification that the necessary documents had been sent to GAEPD requesting coverage under the Permit.

19. On March 3, 2015 and April 9, 2015, the Respondent provided responses to the EPA's Letter of Concern, confirming that it had addressed the deficiencies pertaining to the SWPPP, record keeping requirements, and housekeeping and maintenance requirements. However, the Respondent could not provide documentation that it had submitted the appropriate documents for Permit coverage.

20. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342, for failure to obtain a valid NPDES Permit for a Facility that has stormwater discharges associated with "industrial activity" as defined by the CWA and its implementing regulations.

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

21. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above and in the Administrative Compliance Order.

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

23. The 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.

24. By signing this CA/FO, the 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. The 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.

25. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the Administrative Compliance Order to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

26. Complainant and the 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**

27. 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, the EPA has determined that **twelve thousand dollars (\$12,000)** is an appropriate civil penalty to settle this action.

28. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a 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 979007  
St. Louis, Missouri 63197-9000

29. At the time of payment, the 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  
Water Protection Division  
NPDES Permitting and Enforcement Branch  
Municipal and Industrial Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

31. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the 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 the 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 the 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 the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the 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 the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO and in the Administrative Compliance Order. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein and in the Administrative Compliance Order. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO or in the Administrative Compliance Order. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against the 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 the Respondent and its officers, directors, employees, agents, successors and assigns.

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

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

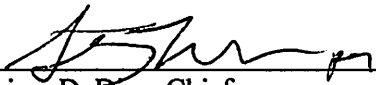
39. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.

40. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**


41. 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 COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
\_\_\_\_\_  
Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: 9/30/2015

**For the RESPONDENT, ENNIS PAINT, INC.:**

  
\_\_\_\_\_  
Martha Brown  
Environmental, Health, and Safety Manager

Date: 8/18/2015



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
ENNIS PAINT, INC. ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
ATLANTA, GEORGIA )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2015-4508(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), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Sep 30, 2015

  
\_\_\_\_\_  
Regional Judicial Officer

Docket No. CWA 04-2015-4508(b)

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Ennis Paint, Inc., Docket No. CWA-04-2015-4508(b) (filed with the Regional Hearing Clerk on this 30 day of September 2015) was served on this 30 day of September 2015, in the manner specified to each of the persons listed below.

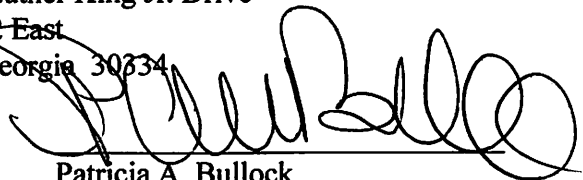
By hand-delivery:

Mr. Wayne Lee  
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:

Mr. Paul Stevenson  
Plant Manager  
Ennis Paint, Inc.  
1855 Plymouth Road, NW  
Atlanta, Georgia 30318

Mr. James A. Capp, Chief  
ATTN: Frances Carpenter  
Watershed Protection Branch  
Georgia Environmental Protection Division  
2 Martin Luther King Jr. Drive  
Suite 1152 East  
Atlanta, Georgia 30334



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