



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OCT 8 8 2010

CERTIFIED MAIL 7006 0810 0004 1131 0530  
RETURN RECEIPT REQUESTED

Mr. Mel Scheuerman  
City of Memphis  
125 North Main Street  
Memphis, Tennessee 38103-2017

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2010-4520(b)  
NPDES Permit No. TNR153051  
Appling/I-40 Northwest Planned Development  
Memphis, Tennessee

Dear Mr. Scheuerman:

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 that you have met all of the provisions under this Final Order. We acknowledge receipt of full payment in the amount of \$2,000.

Should you have any questions or concerns regarding this matter, please contact Mr. Humberto Guzman at (404) 562-8942.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

César A. Zapata, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Tennessee Department of Environment  
and Conservation

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

|                                       |   |                                       |
|---------------------------------------|---|---------------------------------------|
| <b>IN THE MATTER OF:</b>              | ) |                                       |
|                                       | ) | <b>CONSENT AGREEMENT AND</b>          |
| <b>CITY OF MEMPHIS</b>                | ) | <b>FINAL ORDER</b>                    |
| <b>APPLING/I-40 NORTHWEST PLANNED</b> | ) |                                       |
| <b>DEVELOPMENT</b>                    | ) |                                       |
| <b>MEMPHIS, TENNESSEE</b>             | ) |                                       |
|                                       | ) |                                       |
| <b>RESPONDENT.</b>                    | ) | <b>DOCKET NO. CWA-04-2010-4520(b)</b> |

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RECEIVED  
2010 OCT 27 PM 3:11  
EPA REGION 4

**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. The City of Memphis ("Respondent") is a municipality existing under the laws of the State of Tennessee 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 the Appling / I-40 Northwest Planned Development, ("Development") located in Memphis, Shelby County, Tennessee.

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 stormwater, into navigable waters subject to specific terms and conditions. EPA has granted the State of Tennessee through the Department of Environment and Conservation ("TDEC") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The TDEC issued the *Tennessee General NPDES Permit For Discharges of Stormwater Associated with Construction Activities No. TNR100000* ("Permit") under the authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*) and the CWA. The Permit was effective on June 17, 2005, and has an expiration date of May 30, 2010.

8. The TDEC is responsible for the issuance, compliance and enforcement of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent ("NOI") requesting Permit coverage.

9. On April 13, 2009, Respondent submitted an NOI requesting permit coverage to TDEC. A Notice of Coverage was sent to Respondent with an effective date of March 5, 2009, and an expiration date of May 30, 2010.

10. Section 3.3.1 of the Permit requires the retention of the Stormwater Pollution Prevention Plan ("SWPPP") on-site at the location which generates the stormwater discharge, or the location of the SWPPP, along with a contact phone number, shall be posted on-site. If the SWPPP is located off-site, reasonable local access to the SWPPP, during normal working hours, must be provided.

11. Section 3.5.3.1 of the Permit requires the design and implementation of erosion prevention and sediment controls as follows:

- A. The construction-phase erosion prevention controls shall be designed to minimize the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on-site;
- B. All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and good engineering practices. All control measures selected must be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional

must be fully described. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for relevant site situation;

- C. If sediment escapes the construction site, off-site accumulations of sediment that have not reached a stream must be removed at a frequency sufficient to minimize off-site impacts; and
- D. Sediment should be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary and must be removed when design capacity has been reduced by 50%.

12. Section 3.5.5 of the Permit requires the minimization of off-site vehicle tracking of sediments and the generation of dust. A stabilized construction access (a point of entrance/exit to a construction site) shall be described in the SWPPP and implemented to reduce the tracking of mud and dirt onto public roads by construction vehicles.

13. Section 3.5.7 of the Permit requires the SWPPP to describe procedures to ensure that vegetation, erosion and sediment control measures, buffer zones, and other protective measures identified in the site plan are kept in good and effective operating condition. Maintenance needs identified in inspections or by other means shall be accomplished before the next storm event, if possible but in no case more than seven (7) days after the need is identified.

14. Section 4.3.2 of the Permit requires:

- A. The construction activity to be carried out in such a manner to prevent violations of water quality criteria. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters;
- B. There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge;
- C. The stormwater discharge does not cause an objectionable color contrast in the receiving water; and
- D. The stormwater discharge must not result materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.

15. Section 5.2 of the Permit requires the retention of a copy of the SWPPP at the construction site (or other local accessible location) from the date construction commences to the date of termination of permit coverage. The Permittee with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP

whenever they are on the construction site.

16. Section 6.4 of the Permit requires all reasonable steps be taken to minimize or prevent any discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

17. Section 6.14 of the Permit requires the proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit and with the requirements of the SWPPP.

18. On November 4, 2009, representatives of EPA in conjunction with TDEC, conducted a Compliance Stormwater Evaluation Inspection ("CSWEI") at Respondent's Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the TDEC Permit.

19. As a result of the CSWEI, EPA, Region 4 determined that stormwater 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.

20. During the CSWEI, EPA observed the following:

- A. Respondent failed to retain a SWPPP on-site as required by Sections 3.3.1 and 5.2 of the Permit.
- B. Respondent failed to design and implement erosion prevention and sediment controls as required by with Sections 3.5.3.1 and 6.14 of the Permit. Silt fences throughout the Development were not maintained, a stormwater inlet was not protected; and areas of the Development and the banks of the sedimentation pond were not stabilized within fifteen (15) days of disturbance.
- D. Respondent failed to establish proper entrance/exit controls as to prevent off-site vehicle tracking of sediments and the generation of dust, as required by Section 3.5.5 of the Permit.
- E. Respondent failed to prevent sediment discharges into Fletcher Creek by failing to design, install, and maintain erosion controls; by not stabilizing the soils on the Development; and by not containing and/or controlling stormwater run-off, as required by Sections 4.3.2 and 6.4 of the Permit.

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

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

22. 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.

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

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

25. 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.

26. 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.

27. 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.

28. 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**

29. 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 **Two Thousand Dollars (\$2,000.00)** is an appropriate civil penalty to settle this action.

30. 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 979077  
St. Louis, Missouri 63197-9000

31. 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

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

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

33. 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

34. 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.

35. 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.

36. 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.

37. 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.

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

39. 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.

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



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

For Complainant:

Wayne Lee  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9523

For Respondent:

Mel Scheuerman  
City of Memphis  
125 North Main Street  
Memphis, Tennessee 38103-2017  
901-576-6344

42. 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.

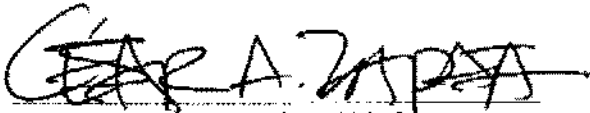
43. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Tennessee was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

44. 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:**



Cesar A. Zapata, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Date: 7/15/10

**For RESPONDENT, CITY OF MEMPHIS:**



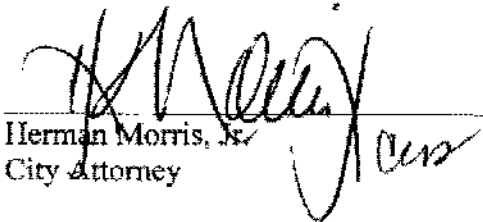
Mel Scheuerman  
City of Memphis

Date: 6-29-2010



Janet Hooks  
Director, Public Services

Date: 6/28/10



Herman Morris, Jr.  
City Attorney

Date: 6/25/10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

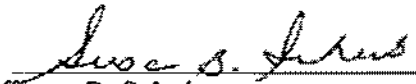
IN THE MATTER OF: )  
 )  
CITY OF MEMPHIS ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
APPLING/I-40 NORTHWEST PLANNED )  
DEVELOPMENT ) DOCKET NO. CWA-04-2010-4520(b)  
MEMPHIS, TENNESSEE )  
 )  
RESPONDENT. )

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: 10/28/10

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

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **THE CITY OF MEMPHIS, APPLING/I-40 NORTHWEST PLANNED DEVLEOPMENT, Docket No. CWA-04-2010-4520(b)** (filed with the Regional Hearing Clerk on 10-28, 2010, was served on 10-28, 2010, in the manner specified to each of the persons listed below.

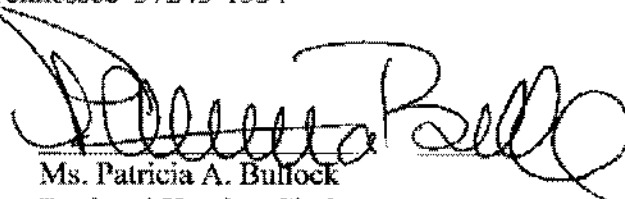
By hand-delivery:

Wayne Lee  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested:

Mr. Mel Scheuerman  
City of Memphis  
125 North Main Street  
Memphis, Tennessee 38103-2017

Mr. Paul Davis  
Director, Division of Water Pollution Control  
Tennessee Department of Environment and Conservation  
401 Church Street  
L & C Annex, 6<sup>th</sup> Floor  
Nashville, Tennessee 37243-1534



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
Sam Nunn Federal Center  
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 7/14/10  
(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: City of Memphis- Applying/J-40 NW Ammed Dev., TN  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4520(b)

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

The Designated Regional/Headquarters Program Office: Water Protection Division

**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)    |