



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 15 2008

CERTIFIED MAIL 7005 3110 0003 6266 0974
RETURN RECEIPT REQUESTED

Ronald W. Farley, Esq.
Burr Forman, LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203

Re: Consent Agreement and Final Order
Docket No. CWA-04-2008-4502(b)
Pine Hill Place
Gardendale, Alabama

Dear Mr. Farley:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency 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. Don Joe at (404) 562-9751.

Sincerely,

A handwritten signature in cursive script, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E.
Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

cc: Alabama Department of Environmental
Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
PINE HILL PLACE, LLC) **CONSENT AGREEMENT AND**
PINE HILL PLACE) **FINAL ORDER**
GARDENDALE, ALABAMA)
)
RESPONDENT.) **DOCKET NO. CWA-04-2008-4502(b)**

2008 APR 15 PM 1:16

RECEIVED
EPA REGION IV

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 Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Pine Hill Place, LLC ("Respondent"), was a limited liability corporation formed under the laws of the State of Alabama and, 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, Respondent owned and/or operated a construction site known as Pine Hill Place ("Development") located at Pine Hill Road, Gardendale, 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 the 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 Plan (“CBMPP”), designed to minimize pollutant discharge 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 October 24, 2006, Respondent submitted to ADEM an NOR and CBMPP requesting permit coverage. A Notice of Coverage was sent to Respondent with an effective date of October 24, 2006 and an expiration date of October 23, 2007.

10. Part 335-6-12-.06(3) of the Permit Regulations requires the Operator to control, suspend or cease construction or discharge upon reduction in effectiveness, loss or failure of a treatment facility or Best Management Practice (“BMP”), until the construction BMP/control is restored or an effective alternative BMP or method of effective treatment is provided.

11. Part 335-6-12-.06(4) of the Permit Regulations requires the Operator to take all reasonable steps 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 discharge(s).

12. Part 335-6-12-.21(2)(b)2 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including but not limited to the minimization of surface area that is disturbed at any one time;

and to minimize introduction and facilitate removal of sediment, nutrients, and other pollutants in the storm water.

13. Part 335-6-12-.21(2)(b)3 of the Permit Regulations requires the CBMPP to include a description of appropriate, effective water quality BMPs to be implemented at the site, including but not limited to the proper cleanup/removal or effective stabilization of sediment deposited offsite, and the effective remediation of instream impacts to the maximum extent practicable.

14. Part 335-6-12-.21(4) of the Permit Regulations requires that BMPs be designed, implemented, and regularly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected/predicted during construction disturbance, and during extended periods of adverse weather and reasonable conditions.

15. Part 335-6-12-.21(5)(a) of the Permit Regulations requires the Operator to ensure that BMPs are fully implemented and regularly maintained.

16. Part 335-6-12-.21(5)(b) of the Permit Regulations requires the Operator to ensure that BMPs shall be implemented to the maximum extent practicable to prevent off-site sedimentation and deposition of construction site wastes.

17. Part 335-6-12-.21(6) Part 335-6-12-.21(6) of the Permit Regulations requires the Operator to remediate any off-site deposition or discharge of sediment and other pollutants, and if required, implement measures to remediate any impacts to the maximum extent practicable.

18. Part 335-6-12-.26(2) of the Permit Regulations requires the Operator to document and ensure that effective BMPs are properly designed, implemented, and consistently maintained to prevent/minimize discharges of pollutants in storm water runoff.

19. Part 335-6-12-.35(1) of the Permit Regulations requires the Operator to properly operate and maintain all BMPs, facilities, systems of treatment and control, and associated appurtenances which are installed or used to achieve compliance.

20. On February 6, 2007, 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 at the Development in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the ADEM Permit Regulations.

21. As a result of the CSWEI, EPA Region 4 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.

22. During the CSWEI, EPA inspectors observed the following:

A. Respondent failed to comply with Part 335-6-12-.05(3), Part 335-6-12-.06(3), Part 335-6-12-.06(4), Part 335-6-12-.21(4), and Part 335-6-12-.21(5)(a) and (b) of the Permit Regulations. No sedimentation pond had been constructed; there were discharge points other than the constructed outfall; and storm water and sediment were discharged into the unnamed tributary to Black Creek without any BMPs or treatment controls.

B. Respondent failed to provide proper operation and maintenance, as required by Part 335-6-12-.05(3), Part 335-6-12-.06(3), Part 335-6-12-.06(4), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.21(5)(b), Part 335-6-12-.26(2), and Part 335-6-12-.35(1) of the Permit Regulations. Silt fences were full and over-topped with sediment at several locations; i.e., near Rain Tree Lane and near the north central portion of the site.

C. Respondent failed to properly clean and maintain streets entrances and exits, as required by Part 335-6-12-.05(3), Part 335-6-12-.06(3), Part 335-6-12-.06(4), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.21(5)(b), Part 335-6-12-.26(2), and Part 335-6-12-.35(1) of the Permit Regulations. Near the entrance/exit of the Pine Hill Road, vehicles had carried mud onto Pine Hill Road.

D. Sediment observed in the unnamed tributary to Black Creek was not prevented or minimized, and the creek was not remediated, as required by Part 335-6-12-.06(3), Part 335-6-12-.21(2)(c), Part 335-6-12-.21(2)(b)2, Part 335-6-12-.21(2)(b)3, Part 335-6-12-.21(5)(a), Part 335-6-12-.21(6), Part 335-6-12-.26(2)2, and Part 335-6-12-.35(1) of the Permit Regulations.

23. 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 Permit Regulations, and also for discharges not authorized by the ADEM Permit Regulations.

III. Stipulations and Findings

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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

31. 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 Fifteen Thousand Dollars (\$15,000.00) is an appropriate civil penalty to settle this action.

32. 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.

33. 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
Water Management Division
Water Programs Enforcement Branch
Gulf Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960.

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

35. 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.

36. 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

37. 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.

38. 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.

39. 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.

40. 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.

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

42. 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.

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

44. 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, Esq.
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:

Ronald W. Farley, Esq.
Burr Forman, LLP
420 North Twentieth Street, Suite 3400
Birmingham, Alabama 35203
(205) 458-5185

45. 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.

46. 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 a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

47. 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:



Douglas F. Mundrick, P.E.
Chief, Water Programs Enforcement Branch
Water Management Division
U.S. EPA, Region 4

Date: 2/23/08

For RESPONDENT PINE HILL PLACE, LLC:


NAME: Cory Mason
TITLE: member

Date: 11/31/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
PINE HILL PLACE, LLC) CONSENT AGREEMENT AND
PINE HILL PLACE) FINAL ORDER
GARDENDALE, ALABAMA)
)
RESPONDENT.) DOCKET NO. CWA-04-2008-4502(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: 4/15/08



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 **Pine Hill Place, LLC Docket No. CWA-04-2008-4502(b)** (filed with the Regional Hearing Clerk on **APR 15 2008**, 2008) was served on **APR 15 2008**, 2008, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall, Esq.
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**By certified mail,
return receipt requested:** Ronald W. Farley, Esq.
Burr Forman, LLP
420 North 20th Street
Suite 3400
Birmingham, AL 35203

Mr. Steve Jenkins, Chief
Field Operations Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(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 2/19/08
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Pine Hill Place, LLC - Gardendale, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 15,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA- 04- 2008- 4502 (b)

The Site Specific Superfund Account Number: _____

WMD

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
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
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) |