



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

JAN 08 2013

CERTIFIED MAIL 70113500000320640291
RETURN RECEIPT REQUESTED

Mr. Jason Reed
Edmondson & Associates
Attorneys & Counselors at Law
Shutt Mansion
28 West Fifth Street
Covington, Kentucky 41011-1453

Re: Consent Agreement and Final Order No. CWA-04-2013-4500(b)
National Pollutant Discharge Elimination System Permit No. KYR10F687
Campbell County High School ATC Addition
Alexandria, Kentucky

Dear Mr. Reed:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Sara Schiff at (404) 562-9870 or via email at schiff.sara@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz". The signature is fluid and cursive, with the first name "Denisse" and last name "Diaz" clearly legible.

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Jeff Cummins
Kentucky Department for Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2013 JAN - 8 PM 4: 26

RECEIVED
EPA REGION IV

HEARING
CLERK

IN THE MATTER OF:)
)
CAMPBELL COUNTY SCHOOL) CONSENT AGREEMENT AND
DISTRICT FINANCE CORPORATION) FINAL ORDER
CAMPBELL COUNTY HIGH SCHOOL)
ATC ADDITION)
ALEXANDRIA, KENTUCKY)
)
RESPONDENT.) DOCKET NO. CWA-04-2013-4500(b)
_____)

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

II. Allegations

3. Campbell County School District Finance Corporation ("Respondent"), is a non-profit corporation duly organized and existing under the laws of the Commonwealth of Kentucky 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 construction site known as Campbell County High School ATC Addition ("Development") located at 909 Camel Crossing, in Alexandria, Kentucky.

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 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 Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") approval to issue NPDES permits pursuant to Section 402(b) of the CWA. The KDEP is responsible for the enforcement of Kentucky Revised Statutes Chapter 224 and the approval of coverage upon submission and approval of a Notice of Intent ("NOI") requesting Permit coverage.

7. KDEP issued Permit No. KYR100000 ("Permit"), applicable to stormwater discharges associated with construction activities, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 and the CWA. The Permit was effective August 1, 2009 and expires July 31, 2014.

8. The Permit is a Kentucky statewide NPDES general permit governing stormwater point source discharges associated with construction activities including clearing, grading, and excavation activities except operations that result in the disturbance of one acre or more of total land area which are not part of a larger common plan of development or sale.

9. On April 27, 2011, the Respondent submitted an NOI to KDEP requesting permit coverage. KDEP sent a coverage acknowledgement letter to the Respondent on May 2, 2011.

10. Part II.A of the Permit requires the development and implementation of a Stormwater Pollution Prevention Plan ("SWPPP"). All operators at the Development are required to comply with the SWPPP or obtain separate coverage under the Permit.

11. Part II.A.5.a of the Permit requires the Permittee to maintain erosion prevention measures, sediment control measures, and other site management practices in an effective operating condition. This part also requires the Permittee to develop a schedule for maintenance activities of the erosion prevention measures, sediment control measures and other site management practices.

12. Part II.A.5.b of the Permit requires the Permittee to perform maintenance on any sediment control measures, erosion control measure or other site management practices that are identified in an inspection as not operating effectively or otherwise require maintenance before the next storm event, or as soon as possible.

13. Part II.A.7.d and e of the Permit require visual inspections to determine proper installation, maintenance and effectiveness of erosion prevention measures, sediment control measures, other site management practices, disturbed areas, areas used for storage of materials and discharge points.

14. Part II.A.7.f of the Permit requires that inspection reports shall be prepared for all inspections, shall be retained with the SWPPP, and shall include: i. the date of inspection; ii. the name and title of the inspector; iii. a synopsis of weather information for the period since the last inspection, including a best estimate of the beginning of each storm event, the duration of each storm event, and the approximate amount of rainfall for each storm event in inches; iv. weather conditions and a description of any discharges occurring at the time of the inspection; v. the location(s) of discharges of sediment or other pollutants from the site; vi. the location(s) of sediment control measures, erosion control measures, or other site management practices that require maintenance; vii. the location(s) of any erosion prevention measures, sediment control measures, or other site management practices that failed to operate as designed or proved inadequate for a particular location; viii. the location(s) where additional erosion prevention measures, sediment control measures, or other site management practices are needed that did not exist at the time of the inspection; ix. the identification of any actions taken in response to inspection findings; x. the identification of any incidents of non-compliance with the SWPPP; xi. a certification that the site is in compliance with the SWPPP if no incidents of non-compliance are identified; and xii. a signature in compliance with the signature requirements in 401 KAR 5:065, Section 1(11).

15. Part II.A.8.a of the Permit requires revision of the SWPPP whenever erosion prevention measures, sediment control measures or other site management practices are significantly modified that may cause a significant effect on the discharge of pollutants to receiving waters or municipal separate storm sewer systems.

16. Part II.A.8.c of the Permit requires revision of the SWPPP if inspections or investigations by site staff or by local, state or federal officials determine that the existing sediment control measures, erosion control measures or other site management practices are ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the construction site.

17. Part II.A.8.e of the Permit requires all necessary modifications to the SWPPP shall be made within seven (7) calendar days following the inspection unless granted an extension of time by the KDEP.

18. On November 1, 2011, a representative of the EPA in conjunction with the KDEP performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at Respondent’s Development. The EPA’s CSWEI was to evaluate the treatment and disposal of stormwater at the Development in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the KDEP Permit.

19. As a result of the CSWEI, the EPA has determined that the Respondent discharged stormwater associated with industrial activity from its Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into a tributary to Pond Creek, which flows into Pond Creek, thence into Licking River, a traditionally navigable water of the United States.

20. At the conclusion of the CSWEI, an Exit Interview was conducted with Mr. Rawn Reynolds, a representative of the Respondent's contractor, Stephen Gross and Sons. Sharon Alexander, a representative of the Respondent, was provided a copy of an "NPDES Inspection Observation Form" which detailed the initial Development observations. The following observations were identified: the construction entrances needed to be maintained; the detention areas north of the construction trailer and adjacent to South Licking Pike needed to be maintained; inlets throughout the site needed more protection; sediment was discharging into a tributary which flows into Pond Creek and off-site; and the student parking lot needed protection.

21. During the CSWEI, the EPA inspector observed:

- A. Sediment in a tributary to Pond Creek that begins flowing at the base of a soil stockpile on the Development. The tributary flows approximately 500 feet off-site into Pond Creek. Sediment was observed in and throughout the entire 500 feet of the tributary and downstream beyond the point of its confluence with Pond Creek.
- B. Numerous erosion prevention measures, sediment control measures, and best management practices ("BMPs") were not maintained in an effective operating condition throughout the Development as required by Part II.A.5 of the Permit, and demonstrated by the discharge of sediment into a tributary of Pond Creek, including:
 - i.) The construction entrance needed to be maintained and redressed as sediment was tracked off-site onto Old US 27.
 - ii.) The existing detention area located directly north of the construction trailer needed stabilization and silt fence maintenance. There were erosion rills along the western bank, damaged silt fencing at the base of the bank and accumulated sediment at the bottom of the detention pond.
 - iii.) Silt fencing throughout the Development and around the perimeter was in need of maintenance or replacement as most of the installed silt fencing was damaged.
 - iv.) The fuel storage tank located near the construction trailer had a drainage hole in the secondary containment that was not plugged to properly avoid contamination of runoff.
 - v.) Storm drain inlet protection BMPs were not properly maintained since there were gaps between straw bales allowing sediment to enter the storm sewer system.
 - vi.) A small section of silt fencing was used to

protect a tributary to Pond Creek from a soil stockpile located between the student parking lot and South Licking Pike. The silt fencing and stockpile needed additional maintenance as sediment was running off from the stockpile into the tributary to Pond Creek. The slopes adjacent to the stockpile were eroding directly into the tributary to Pond Creek below and were in need of maintenance. vii) Additional maintenance was needed to prevent sediment from leaving the construction site and accumulating on the student parking lot or washing into the existing storm sewer system. Sediment had collected in various areas around the parking lot and was observed at the bottom of storm drain inlets around the parking lot.

- C. Campbell County's inspection reports were not thorough and did not meet all of the requirements of Part II.A.7.f the Permit, including: i.) The location(s) of discharge(s) of sediment or other pollutants from the Development were not stated in a copy of the most recent inspection report prepared before the CSWEI, which was dated October 28, 2011, as required by Part II.A.7.f.v of the Permit. Instead, that report stated there was no sediment leaving the construction site or off-site impacts. However, sediment was observed in a tributary to Pond Creek during the CSWEI, and, according to rainfall data, there had not been any rainfall events between the October 28, 2011 inspection and the November 1, 2011 CSWEI. ii.) The inspection report dated October 28, 2011 was not signed by the duly authorized representative of Campbell County as required by Part II.A.7.f.xii of the Permit.
- D. The SWPPP was not updated to current site conditions as required by Part II.A.8.a of the Permit. The soil stockpile located between the student parking lot and South Licking Pike was not shown on the SWPPP. The soil stockpile had a significant impact on the discharge of pollutants to receiving waters because the stockpile was not stabilized and appropriate BMPs were not implemented allowing sediment to easily discharge into the tributary to Pond Creek located below the stockpile.

22. Therefore, the 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.

III. Stipulations and Findings

23. Complainant and the 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.

24. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

25. 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.

26. 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.

27. 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.

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

29. 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

30. 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 twenty-five thousand dollars (\$ 25,000.00) is an appropriate civil penalty to settle this action.

31. 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 979077
St. Louis, Missouri 63197-9000

32. 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
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

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

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

34. 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 the 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

35. 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.

36. 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.

37. 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. 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 the 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 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.

38. 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.

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

40. 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.

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

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

For Complainant:

Ms. Tanya Floyd
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center

61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9813

For the Respondent:

Mr. Jason Reed
Edmondson & Associates
Attorneys & Counselors at Law
Shutt Mansion
28 West Fifth Street
Covington, Kentucky 41011-1453
(859) 491-5551

43. 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.

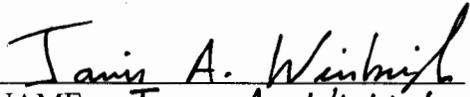
44. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

45. 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, CAMPBELL COUNTY SCHOOL DISTRICT FINANCE CORPORATION:


NAME: Janis A. Winbigler
TITLE: Chair

Date: 10/24/12

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


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

Date: 1/8/13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
CAMPBELL COUNTY SCHOOL) **CONSENT AGREEMENT AND**
DISTRICT FINANCE CORPORATION) **FINAL ORDER**
CAMPBELL COUNTY HIGH SCHOOL)
ATC ADDITION)
ALEXANDRIA, KENTUCKY)
)
RESPONDENT.) **DOCKET NO. CWA-04-2013-4500(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: Jan. 8, 2013



Susan B. Schub
Regional Judicial Officer

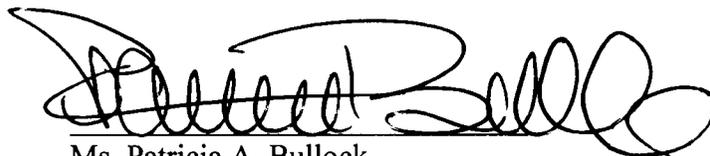
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Campbell County School District Finance Corporation, Docket No. CWA-04-2013-4500(b)** (filed with the Regional Hearing Clerk on JAN 08 2013 ~~3~~ was served on JAN 08 2013 ~~3~~ 2013, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Tanya Floyd
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. Jason Reed
Edmondson & Associates
Shutt Mansion
28 West Fifth Street
Covington, Kentucky 41011-1453

Mr. Jeff Cummins, Acting Director
Division of Enforcement
Kentucky Department for Environmental Protection
14 Reilly Road
Frankfort, Kentucky 40601



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511