



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OCT 13 2010

CERTIFIED MAIL 70060810000411310240  
RETURN RECEIPT REQUESTED

David M. Moore  
Balch & Bingham LLP  
30 Ivan Allen Jr. Blvd., NW, Suite 700  
Atlanta, Georgia 30308-3036

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2010-4532(b)  
NPDES Permit No. MSR105432  
Collinsville, Mississippi

Dear Mr. Moore:

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

Should you have any questions or problems, please contact Ms. Rebecca Fauver at (404) 562-9758.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

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

Enclosure

cc: Mississippi Department of Environmental  
Quality

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION 4  
2010 OCT 13 PM 12:53

IN THE MATTER OF:	)	
	)	CONSENT AGREEMENT AND
MISSISSIPPI DEPARTMENT OF	)	FINAL ORDER
TRANSPORTATION	)	
STATE ROUTE 19	)	
COLLINSVILLE, MISSISSIPPI	)	
	)	
RESPONDENT.	)	DOCKET NO. CWA-04-2010-4532(b)

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**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 ("Complainant").

**II. Allegations**

EPA alleges as follows:

3. Mississippi Department of Transportation ("Respondent") is a political subdivision and entity of the State of Mississippi created by Act of the General Assembly as signed by the Governor, 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 a construction site known as State Route 19 ("Development") located between Lauderdale County Line and State Route 492 located in Collinsville, Mississippi. Construction activity at the Development was conducted by a prime contractor to Respondent.

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 Mississippi, through the Department of Environmental Quality ("MDEQ"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. MDEQ issued the *Large Construction Stormwater General Permit For Land Disturbing Activities of 5 or More Acres to Discharge Stormwater in Accordance with the National Pollutant Discharge Elimination System (NPDES)*, Permit No. MSR10 ("Permit") in accordance with the provisions of the Mississippi Water Pollution Control Law (Mississippi Code Ann. Sections 49-17-1 *et seq.*, and the regulations and standards adopted and promulgated thereunder) and the CWA. The Permit was effective June 10, 2005, with an expiration date of May 31, 2010.

8. Coverage under the Permit is obtained by submitting a Large Construction Notice of Intent ("LCNOI") form at least 30 days prior to the commencement of construction, or 15 days if a Stormwater Pollution Prevention Plan ("SWPPP") has previously been approved.

9. On March 3, 2009, Respondent submitted to MDEQ a LCNOI requesting permit coverage. A Notice of Coverage was sent to Respondent with an effective date of March 19, 2009, and an expiration date of May 31, 2010.

10. Section ACT6 Condition T-2(4) of the Permit requires the erosion and sediment controls to implement Best Management Practices ("BMPs") to mitigate adverse impacts from storm water runoff.

11. Section ACT6 Condition T-2(5) of the Permit requires the erosion and sediment controls to remove sediment that would contribute to or cause adverse impacts to receiving waters from storm water before it leaves the site.

12. Section ACT6 Condition T-3(2) of the Permit requires the SWPPP to include structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff from exposed areas.

13. Section ACT6 Condition T-8 of the Permit requires the owner or operator to prepare an orderly listing which coordinates the timing of all major land-disturbing activities together with the necessary erosion and sedimentation control measures planned for the project.

14. Section ACT7 Condition S-1(2) of the Permit requires that BMPs are in place upon commencement of construction.

15. Section ACT7 Condition S-1(4) of the Permit requires that the SWPPP be amended whenever it proves to be ineffective in controlling storm water pollutants.

16. Section ACT7 Condition S-1(5) of the Permit requires installation of needed erosion controls even if they may be located in the way of subsequent activities such as utility installation, grading or construction.

17. Section ACT7 Condition S-1(6) of the Permit requires installation of additional and/or alternative erosion and sediment controls when existing controls prove to be ineffective in preventing sediment from leaving the site.

18. Section ACT11 Condition T-2 of the Permit requires that all reasonable steps be taken to minimize or prevent any discharge in violation of the Permit which is likely to adversely affect human health or the environment.

19. Section ACT11 Condition T-18 of the Permit requires the owner or operator to notify MDEQ orally within twenty-four (24) hours, and in writing within five (5) days, from the time of becoming aware of unanticipated noncompliance.

20. On June 15, 2009, EPA's contractor, Science Applications International Corporation, and MDEQ, performed 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 MDEQ Permit.

21. As a result of the CSWEI, EPA has determined that stormwater associated with industrial activity was discharged from the Development from construction activity on the relevant dates identified herein 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's contractor observed the following:

A. The SWPPP did not include the timing of all major land-disturbing activities with applicable control measures, as required by Section ACT6 Condition T-8 of the Permit.

B. Trenches were cut around the sediment ponds at Tallashua Creek approximately two (2) weeks prior to the CSWEI to discharge water that had ponded in work areas, but other BMPs were not implemented. Evidence of vehicle tracks and sediment were observed in Tallashua Creek. Other silt fencing was not properly installed. Respondent failed to take reasonable steps to prevent

sediment discharges, and failed to properly install BMPs, as required by Section ACT6 Conditions T-2(4), T-2(5) and T-3(2); Section ACT7 Conditions S-1(5) and S-1(6); and Section ACT11 Condition T-2 of the Permit.

C. BMPs were not in place before clearing a grading near the banks of Threat Branch which exposed bare soil next to the creek. Sediment was observed in Threat Branch. Respondent failed to take reasonable steps to prevent sediment discharges, and failed to make sure all BMPs were in place before commencement of construction as required by Section ACT7 Conditions S-1(2) and S-1(5) and S-1(6); and Section ACT11 Condition T-2 of the Permit.

D. Trenches had been cut around the sediment ponds at Tallashua Creek approximately two (2) weeks prior to the CSWEI, and Respondent failed to notify orally or in writing of this unanticipated noncompliance as required by Section ACT11 Condition T-18 of the Permit.

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 MDEQ Permit; and also for discharges not authorized by the MDEQ Permit.

### **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. Solely for the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations or other legal allegations set out above.

26. Solely for the purposes of this CA/FO, 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that forty-four thousand dollars (\$44,000) is an appropriate civil penalty to settle this action.

32. Respondent shall submit payment of the penalty specified in the preceding paragraph within 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 Protection Division  
Clean Water Enforcement Branch  
West NPDES 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 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**

36. 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.

37. Nothing in this CA/FO shall be construed to create any rights in, or grant any cause of action to, any person not a party to this CA/FO. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have against any and all other persons and entities not a party hereto. The terms of this CA/FO shall not be admissible in any judicial or administrative proceeding, except by the parties to the CA/FO to enforce its terms, or by the Respondent to defend against any proceeding or claim asserted by a third party.

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 other federal or state statute, regulation or permit.

39. Except as otherwise set forth herein, this CA/FO constitutes full 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. Nothing in this CA/FO shall be construed as a waiver of any defense or position available to Respondent, including its sovereign interests as an entity of the State of Mississippi pursuant to the 11th Amendment to the United States Constitution or provisions of the Mississippi Constitution, and State or federal law respecting jurisdiction over State political subdivisions and legal entities.

41. 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.

42. This CA/FO applies to and is binding upon Respondent and its officials, board and director in their official capacity.

43. 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.

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

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

For Complainant:

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



For Respondent:

David M. Moore  
Balch & Bingham LLP  
30 Ivan Allen Jr. Blvd., NW, Suite 700  
Atlanta, GA 30308-3036  
(404) 962-3530

46. 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.

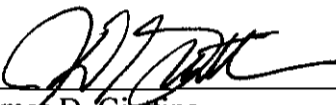
47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Mississippi was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

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

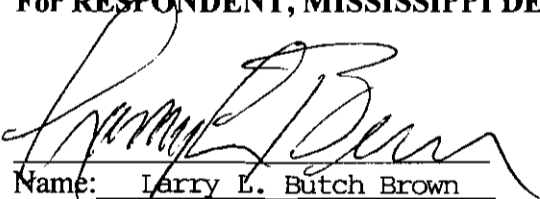
**AGREED AND CONSENTED TO:**

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

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division

Date: 8/19/10

**For RESPONDENT, MISSISSIPPI DEPARTMENT OF TRANSPORTATION:**

  
\_\_\_\_\_  
Name: Larry L. Butch Brown  
Title: Executive Director

Date: 08.05.10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

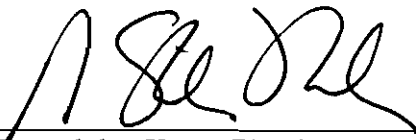
IN THE MATTER OF: )  
 )  
MISSISSIPPI DEPARTMENT OF ) CONSENT AGREEMENT AND  
TRANSPORTATION ) FINAL ORDER  
STATE ROUTE 19 )  
COLLINSVILLE, MISSISSIPPI )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2010-4532(b)  
\_\_\_\_\_ )

**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*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/8/2010

  
\_\_\_\_\_  
Gwendolyn Keyes Fleming  
Regional Administrator

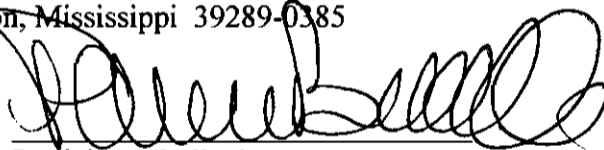
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter **Mississippi Department of Transportation State Route 19, Docket No. CWA-04-2010-4532(b)** (filed with the Regional Hearing Clerk on OCT 13 2010, 2010, was served on OCT 13 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Judy Marshall  
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: David M. Moore  
Balch & Bingham LLP  
30 Ivan Allen Jr. Blvd., NW, Suite 700  
Atlanta, GA 30308-3036

Jerry Cain  
Director, Office of Pollution Control  
Mississippi Department of Environmental Quality  
P. O. Box 10385  
Jackson, Mississippi 39289-0385



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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 8/17/10  
(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: MS Dept of Transportation, State Rte 19, Collinsville, MS  
(Name of person and/or, Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 44,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4532(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)    |