



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

JAN 07 2008

CERTIFIED MAIL 7005 3110 0003 6266 0783
RETURN RECEIPT REQUESTED

Mr. Joel W. Mulkin
Highpoint Development, Inc.
14 Office Park Circle
Suite 260
Birmingham, Alabama 35223

Re: Consent Agreement and Final Order
Docket No. CWA-04-2008-4500(b)
Fulton Springs Subdivision
Birmingham, Alabama

Dear Mr. Mulkin:

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. Bruce Henry at (404) 562-9754.

Sincerely,

A handwritten signature in black ink that reads "for/Susan J. Pipe".

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: |) | |
| |) | |
| HIGHPOINT DEVELOPMENT, INC. |) | CONSENT AGREEMENT AND |
| FULTON SPRINGS SUBDIVISION |) | FINAL ORDER |
| BIRMINGHAM NORTH, ALABAMA |) | |
| |) | |
| RESPONDENT. |) | Docket No.: CWA-04-2008-4500(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 ("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, Highpoint Development, Inc. ("Respondent"), was a corporation duly organized and existing 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 Fulton Springs Subdivision ("Facility") located at Stouts Road, Birmingham North, Alabama.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as 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

2008 JAN -7 AM 7:57
HEARING OFFICE
EPA REGION 4

CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a 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. EPA has granted the State of Alabama through the Alabama Department of Environment Management (“ADEM”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

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 September 19, 2006. Regulated facilities must submit a Notice of Registration (“NOR”) requesting coverage under the Permit Regulations, and must submit a 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 Practices Plan (“CBMPP”), designed to minimize pollutant discharges 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 August 4, 2006, Respondent submitted an NOR for the Facility to ADEM seeking coverage under the Permit Regulations. A Notice of Coverage was sent to Respondent with an effective date of August 4, 2006 and an expiration date of August 3, 2007.

10. On February 8, 2007, representatives of EPA in conjunction with ADEM performed a Compliance Storm Water Evaluation Inspection (“CSWEI”) at Respondent’s Facility. EPA’s CSWEI was to evaluate the treatment and disposal of storm water at the Facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 126.26, and the Alabama Permit Regulations.

11. As a result of the CSWEI, EPA alleges that Respondent failed to comply with:

A. Rule 335-6-12-.06(4) of the Permit Regulations by failing to take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge to two streams that were heavily impacted by sediment;

B. Rules 335-6-12-.21(4) and 335-6-12-.21(5)(a) of the Permit Regulations by failing to ensure that best management practices (“BMPs”) were designed, implemented, and

regularly maintained by BMPs being absent in many areas at the Facility resulting in two streams at the Facility being heavily impacted by sediment.

C. Rule 335-6-12-.21(6) of the Permit Regulations by failing to remediate off-site deposition or discharge of sediment and other pollutants to the maximum extent practicable in two streams at the Facility heavily impacted by sediment.

D. Rule 335-6-12-.35(10) of the Permit Regulations by failing to take prompt steps to mitigate and prevent/minimize any adverse impact resulting from noncompliance with the Permit and not removing, to the maximum extent practical, sediment deposited in two streams at the Facility.

E. Rule 335-6-12-.35(11)(a) of the Permit Regulations by failing to take all reasonable steps, including cessation of construction, building production or other activities, to prevent/minimize impacts to two streams at the Facility that were heavily impacted by sediment.

12. Therefore, EPA alleges that Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with Parts 335-6-12-.21, Part 335-6-12-.06(4), Part 335-6-12-.21(4), 335-6-12-.21(5)(a), 335-6-12-.21(6), 335-6-12-.35(10) and 335-6-12-.35(11)(a) of the Permit, and also for discharges not authorized by the Permit.

III. Stipulations and Findings

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.

19. 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

20. 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 fourteen thousand dollars (\$14,000) is an appropriate civil penalty to settle this action.

21. 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

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

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

24. 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 per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

25. 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

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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.

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

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

For Complainant:

Laurie D. Dubriel
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

For Respondent:

Joel W. Mulkin, President
Highpoint Development, Inc.
14 Office Park Circle, Suite 260
Birmingham, Alabama 35223

34. 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.

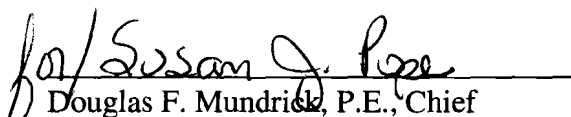
35. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

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

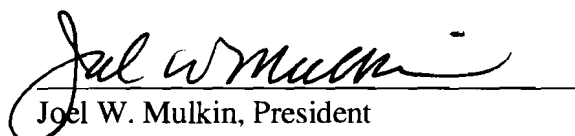
AGREED AND CONSENTED TO:

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: 11/14/07

For RESPONDENT, HIGHPOINT DEVELOPMENT, INC.:


Joel W. Mulkin, President
Highpoint Development, Inc.

Date: 10/8/07

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


| | | |
|------------------------------------|---|----------------------------------------|
| IN THE MATTER OF: |) | |
| |) | CONSENT AGREEMENT AND |
| HIGHPOINT DEVELOPMENT, INC. |) | FINAL ORDER |
| FULTON SPRINGS SUBDIVISION |) | |
| BIRMINGHAM NORTH, ALABAMA |) | |
| |) | |
| RESPONDENT. |) | Docket No.: CWA-04-2008-4500(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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/3/08



Susan B. Schub
Regional Judicial Officer

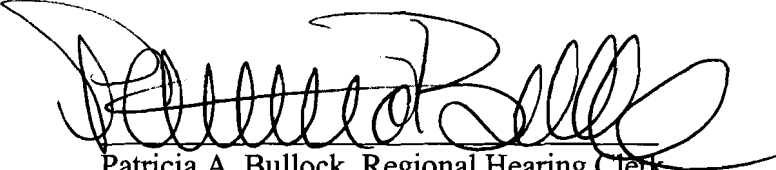
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Highpoint Development, Inc.**, Docket No. **CWA-04-2008-4500(b)** (filed with the Regional Hearing Clerk on ____, 2008) was served on 1-7, 2008, in the manner specified to each of the persons listed below.

By hand-delivery: Laurie D. Dubriel
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**By certified mail,
return receipt requested:** Mr. Joel W. Mulkin
Highpoint Development, Inc.
14 Office Park Circle
Suite 260
Birmingham, Alabama 35223

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 11/13/07
(Name) (Date)

in the WMD/WPEB/GES 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: Highpoint Development, Inc - Fulton Springs Subdivision, Birmingham, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 14,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2008-4500(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 2. Regional Hearing Clerk | 3. Designated Program Office 4. Regional Counsel (EAD) |
|----------------------------------------------------|-----------------------------------------------------------|