



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

APR 27 2010

CERTIFIED MAIL 7009 0960 0000 2366 0116
RETURN RECEIPT REQUESTED

Mr. Wayne Stokes
Pontotoc Union Lee Alliance
P.O. Box 690
Pontotoc, Mississippi 38863

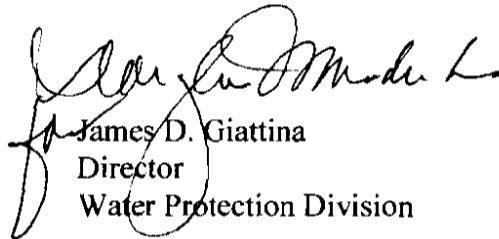
Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-4509(b)
Blue Springs Rail Spur
Blue Springs, Mississippi

Dear Mr. Stokes:

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 Acting Regional Administrator. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Araceli Bonilla at (404) 562-9790.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: Mississippi Department of Environmental
Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2010 MAR 27 AM 8:01
MELINDA CLEGG
EPA REGION 4

IN THE MATTER OF:)
)
PONTOTOC UNION LEE ALLIANCE AND) CONSENT AGREEMENT AND
EUTAW CONSTRUCTION COMPANY, INC) FINAL ORDER
BLUE SPRINGS RAIL SPUR)
BLUE SPRINGS, MISSISSIPPI)
)
RESPONDENTS.) DOCKET NO. CWA-04-2010-4509(b)
_____)

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

3. Pontotoc Union Lee Alliance ("PUL") is a partnership formed under the laws of the State of Mississippi and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Eutaw Construction Company, Inc. ("ECC"), is a corporation duly organized and existing under the laws of the State of Mississippi 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, PUL and ECC owned and/or operated a construction site known as Blue Springs Rail Spur ("Development") located at U.S. Highway 78, Blue Springs, Mississippi.

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. 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 Storm Water General Permit For Land Disturbing Activities of 5 or More Acres to Discharge Storm Water 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. 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 Storm Water Pollution Prevention Plan (“SWPPP”) has previously been approved.

8. The MDEQ is responsible for the approval of coverage under the Permit, upon submission of the LCNOI and SWPPP.

9. On March 10, 2008, PUL submitted to MDEQ a LCNOI requesting permit coverage for approximately 39.92 acres.

10. Section ACT6 Condition T-1 of the Permit requires the development and implementation of a SWPPP. The SWPPP must be prepared in accordance with sound engineering practices and shall identify potential sources of pollution, which may affect the quality of storm water discharges. The SWPPP shall describe and ensure the implementation of best management practices (“BMPs”) which will reduce pollutants in storm water discharges and assure compliance with the terms and conditions of the Permit.

11. Section ACT6 Condition T-2(2) of the Permit requires the erosion and sediment controls to limit the exposure of disturbed areas to the shortest amount of time possible.

12. Section ACT6 Condition T-2(3) of the Permit requires the erosion and sediment controls to minimize the amount of surface area that must be disturbed.

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

days or more, the appropriate temporary or permanent vegetative practices shall be implemented within seven calendar days.

16. Section ACT6 Condition T-4(4) of the Permit requires the SWPPP to include a description of any post-construction control measures to control pollutants in storm water after construction is complete.

17. Section ACT6 Condition T-6 of the Permit requires appropriate housekeeping practices to be implemented to prevent pollutants from entering storm water from construction sites.

18. Section ACT6 Condition T-7 of the Permit requires the owner or operator of linear construction projects to prepare standard diagrams of erosion and sediment controls to be used.

19. 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.

20. Section ACT6 Condition T-9 of the Permit requires the SWPPP to include controls to prevent erosion and adverse impacts to waters.

21. Section ACT7 Condition S-1(1) of the Permit requires implementation of the SWPPP.

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

23. 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.

24. 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.

25. Section ACT7, Condition S-1(7) of the Permit requires the minimization of off-site vehicle tracking of sediments.

26. Section ACT7 Condition S-2(9) of the Permit requires maintenance of all erosion controls. Except for sedimentation basins, all accumulated sediment shall be removed from structural controls when sediment deposits reach 1/3 to 1/2 the height of the control. For sediment basins, accumulated sediment shall be removed when the capacity has been reduced by half. Non-functioning controls shall be repaired, replaced or supplemented with functional controls within 24 hours of discovery or as soon as field conditions allow.

27. Section ACT8 Condition L-1 of the Permit requires that storm water discharges shall be free from: (1) debris, oil, scum and other floating materials other than in trace amounts; (2) eroded soils and other materials that will settle to form objectionable deposits in receiving waters; (3) suspended solids, turbidity and color at levels inconsistent with the receiving waters; and (4) chemicals in concentrations that would cause violations of water quality criteria.

28. 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.

29. Section ACT11 Condition T-12 of the Permit requires the proper operation and maintenance of all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner or operator to achieve compliance with the conditions of the Permit, including the SWPPP.

30. On May 12, 2009, representatives of EPA, in conjunction with MDEQ, performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Development to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the MDEQ Permit.

31. 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.

32. During the CSWEI, EPA observed the following:

A. Approximately 60-80 acres of land were cleared and under construction. The SWPPP was not site-specific and contained BMPs that had not been implemented. PUL and/or ECC failed to develop and implement an appropriate SWPPP, or amend the SWPPP, reflective of the construction activities, as required by Section ACT6 Conditions T-1, T-2(4) and T-9, and Section ACT7 Conditions S-1(1), S-1(2) and S-1(4) of the Permit.

C. Silt fences were not properly maintained on the west side of the spur below the lake, near the drainage culvert leading to the tributary of Caldwell Creek, and an area just north of the tributary of Caldwell Creek; and rock check dams were not properly maintained along the drainage ditch off of CR 213 near the Highway 178 rail spur bridge. PUL and/or ECC failed to properly install and/or maintain erosion controls along the tributary of Caldwell Creek, as required by Section ACT7 Condition S-2(9) and Section ACT12 Condition T-12 of the Permit.

D. The SWPPP did not include post-construction measures, legible or accurate diagrams of erosion and sediment controls, or the timing of all major land-disturbing activities with applicable control measures, as required by Section ACT6 Conditions T-4(4), T-7 and T-8 of the Permit.

E. Sediment was observed in the tributary of Caldwell Creek north of Highway 78. Additional measures had not been installed to prevent sediment from leaving the Development at the drainage culvert, and in upstream portions of Caldwell Creek and a lake, as required by Section ACT6 Condition T-2(5), Section ACT7 Condition S-1(6), Section ACT8 Condition L-1 and Section ACT11 Condition T-2 of the Permit.

F. Waste oil and waste filters had no secondary containment; a large fuel tank approximately 200 feet from the tributary of Caldwell Creek had no secondary containment; and used motor oil canisters did not have proper containment. Appropriate housekeeping practices were not implemented to prevent pollutants from entering storm water, as required by Section ACT6 Condition T-6 of the Permit.

G. PUL and/or ECC failed to minimize sediment tracking onto Highway 178 near the rail spur bridge area, as required by Section ACT7 Condition S-1(7) of the Permit.

33. Therefore, PUL and/or ECC 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 for discharges not authorized by the Permit.

III. Stipulations and Findings

34. Complainant, PUL, and ECC 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.

35. For the purposes of this CA/FO, PUL and ECC admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

37. PUL and ECC 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.

38. By signing this CA/FO, PUL and ECC 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.

39. 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 PUL and ECC was materially false or inaccurate at the time such information or certification was provided to EPA.

40. Complainant, PUL, and ECC 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

41. 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 THOUSAND DOLLARS (\$40,000)** is an appropriate civil penalty to settle this action.

42. PUL and/or ECC 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

43. At the time of payment, PUL and/or ECC 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

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

45. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by PUL and/or ECC to pay the penalty assessed by the CA/FO in full by its due date may subject PUL and/or ECC 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

46. This CA/FO shall not relieve PUL and ECC 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.

47. 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 PUL and ECC's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for PUL and ECC's violation of any federal or state statute, regulation or permit.

48. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant, PUL, and ECC 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 PUL and ECC, 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 PUL and ECC 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.

49. 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.

50. This CA/FO applies to and is binding upon PUL and ECC and its officers, directors, employees, agents, successors and assigns.

51. Any change in the legal status of PUL and ECC, including but not limited to any transfer of assets of real or personal property, shall not alter PUL and ECC's responsibilities under this CA/FO.

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

53. 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
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 Respondents:

Wayne Stokes
Pontotoc Union Lee Alliance
P.O. Box 690
Pontotoc, Mississippi 38863

Ben Eakes
Eutaw Construction Company, Inc.
P.O. Box 36
Aberdeen, Mississippi 39730

36. 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.

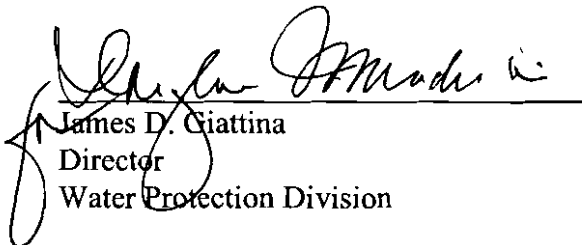
37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Mississippi was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

38. 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

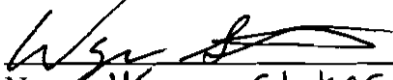
Date: 3/15/10

For RESPONDENTS, Pontotoc Union Lee Alliance & Eutaw Construction Company, Inc.:



Name: Ben Eakes
Title: Project Manager

Date: 2-25-10



Name: Wayne Stokes
Title: Chairman, The PUL Alliance

Date: 2-25-10

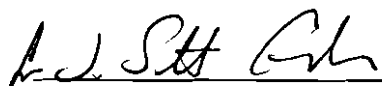
IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
PONTOTOC UNION LEE ALLIANCE AND)	FINAL ORDER
EUTAW CONSTRUCTION COMPANY, INC)	
BLUE SPRINGS RAIL SPUR)	
BLUE SPRINGS, MISSISSIPPI)	
)	
RESPONDENTS.)	DOCKET NO. CWA-04-2010-4509(b)

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: 4/22/10



 A. Stanley Meiburg
 Acting 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 of Pontotoc Union Lee Alliance and Eutaw Construction Company, Inc., **Docket No. CWA-04-2010-4509(b)** (filed with the Regional Hearing Clerk on APR 27 2010, 2010, was served on APR 27 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery:

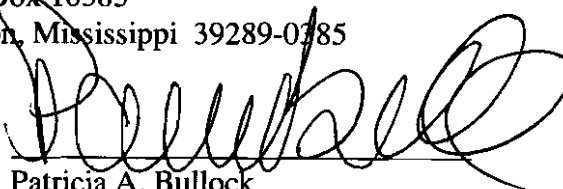
Judy K. Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Wayne Stokes
Pontotoc Union Lee Alliance
P.O. Box 690
Pontotoc, Mississippi 38863

Ben Eakes
Eutaw Construction Company, Inc.
P.O. Box 36
Aberdeen, Mississippi 39730

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 Clerk
Sam Nunn Federal Center
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 3/2/10
(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: Blue Springs Rail Spur, PULA+ ECC, Blue Springs, MS
(Name of person and/or Company/Municipality making the payment)

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

The Case Docket Number: CWA-04-2010-4509(b)

The Site Specific Superfund Account Number: _____

Water Protection Division

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) |