



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

MAY 12 2011

CERTIFIED MAIL 70060810000411310820
RETURN RECEIPT REQUESTED

Thomas E. Needham P.E., Director
Shelby County Division of Public Works
160 North Main Street, Suite 801
Memphis, Tennessee 38103

Re: Consent Agreement and Final Order
Docket No. CWA-04-2011-4502(b)

Dear Mr. Needham:

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 IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Humberto Guzman at (404) 562-8942.

Sincerely,

A handwritten signature in cursive script that reads "Molly Davis (for)".

Molly Davis, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Tennessee Department of Environment
and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
SHELBY COUNTY, TENNESSEE) CONSENT AGREEMENT AND
HOUSTON LEVEE ROAD IMPROVEMENT) FINAL ORDER
MEMPHIS, TENNESSEE)
RESPONDENT) DOCKET NO. CWA-04-2011-4502(b)

2011 APR 12 PM 3:12
Regional Counsel
EPA/Region 4

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

II. Allegations

3. At all times relevant to this action, Shelby County ("Respondent"), is a municipality existing under the laws of the State of Tennessee 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 and/or operated a construction site known as the Houston Levee Road Improvement, between Wolf River and Macon Road ("Site"), located in Shelby County, Tennessee.

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 Tennessee through the Department of Environment and Conservation (“TDEC”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The TDEC issued the *Tennessee General NPDES Permit For Discharges of Stormwater Associated with Construction Activities No. TNR100000* (“Permit”) under the authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*) and the CWA. The Permit was effective on June 17, 2005, and has an expiration date of May 30, 2010.

8. The TDEC is responsible for the issuance, compliance and enforcement of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting Permit coverage.

9. On April 23, 2007, Respondent submitted an NOI requesting permit coverage to the TDEC. A Notice of Coverage was sent to Respondent with an effective date of May 31, 2007, and expiration date of May 30, 2010.

10. Section 3.3.1 of the Permit requires the retention of the Stormwater Pollution Prevention Plan (“SWPPP”) on-site. If the site is inactive or does not have an on-site location adequate to store the SWPPP, the location of the SWPPP, along with a contact phone number, shall be posted on-site. If the SWPPP is located off-site, reasonable local access to the SWPPP, during normal working hours, must be provided.

11. Section 3.3.2 of the Permit requires the Permittee to post near the main entrance of the construction site accessible to the public: (1) the Notice of Coverage with the NPDES Permit Number; (2) name, company name, email address (if available), telephone number, and address of the project site owner or local contact person; (3) a brief description of the project; and (4) the location of the SWPPP if it is not located on-site.

12. Section 3.5.3.1 of the Permit requires the design and implementation of erosion prevention and sediment controls as follows:

- A. The construction-phase erosion prevention controls shall be designed to minimize the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on-site;
- B. All control measures must be properly selected, installed, and maintained in accordance with the manufacturer’s specifications (where applicable)

and good engineering practices. All control measures selected must be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of storm water runoff may be required, and must be fully described. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for relevant site situation;

- C. If permanent or temporary vegetation is to be used as a control measure, then the timing of the planting of the vegetation cover must be discussed in the SWPPP;
- D. If sediment escapes the construction site, off-site accumulations of sediment that have not reached a stream must be removed at a frequency sufficient to minimize off-site impacts;
- E. Sediment should be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary and must be removed when design capacity has been reduced by fifty percent (50%);
- F. Litter, construction debris, and construction chemicals exposed to storm water shall be picked up prior to anticipated storm events or before being carried off of the site by wind, or otherwise prevented from becoming a pollutant source for storm water discharges;
- G. Off-site erodible material storage areas (including overburden and stockpiles of dirt, etc.) used primarily by the permitted project are considered a part of the project and shall be addressed in the SWPPP;
- H. Pre-construction vegetative ground cover shall not be destroyed, removed or disturbed more than ten (10) days prior to grading or earth moving unless the area is seeded and/or mulched or other temporary cover is installed;
- I. Clearing and grubbing must be held to the minimum necessary for grading and equipment operation;
- J. Construction must be sequenced to minimize the exposure time of graded or denuded areas;
- K. Construction must be phased for projects in which over 50 acres of soil will be disturbed. Areas of the completed phase must be stabilized within fifteen (15) days. No more than fifty (50) acres of active soil disturbance is allowed at any time during the construction project;

- L. Erosion prevention and sediment control measures must be in place and functional before earth moving operations begin, and must be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but must be replaced at the end of the workday;
- M. The following records shall be maintained on or near the site: the dates when major grading activities occur; the dates when construction activities temporarily or permanently cease on a portion of the site; the dates when stabilization measures are initiated; inspection records and rainfall records; and,
- N. Maintain a rain gauge and daily rainfall records at the site or use a reference site for a record of the daily amount of precipitation.

13. Section 3.5.5 of the Permit requires that off-site vehicle tracking of sediments and the generation of dust shall be minimized. A stabilized construction access (a point of entrance/exit to a construction site) shall be described in the SWPPP and implemented to reduce the tracking of mud and dirt onto public roads by construction vehicles.

14. Section 3.5.7 of the Permit requires the SWPPP to describe procedures to ensure that vegetation, erosion and sediment control measures, buffer zones, and other protective measures identified in the site plan are kept in good and effective operating condition. Maintenance needs identified in inspections or by other means shall be accomplished before the next storm event, if possible but in no case more than seven (7) days after the need is identified.

15. Section 3.5.8.1 of the Permit requires that inspectors successfully complete the "Fundamentals of Erosion Prevention and Sediment Control" course, or an equivalent course, for individuals involved in land-disturbing activities. A copy of the certification or training record for inspector certification should be kept on-site.

16. Section 3.5.8.2 of the Permit requires the Permittee to document inspections and include the scope of the inspection, names and title of personnel making the inspection, the dates of the inspection; documentation will be maintained on-site and made available upon request.

17. Section 4.3.2 of the Permit requires:

- A. The construction activity to be carried out in such a manner that will prevent violations of water quality criteria. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of waters;

- B. There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge;
- C. The storm water discharge does not cause an objectionable color contrast in the receiving water; and
- D. The storm water discharge must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.

18. Section 5.2 of the Permit requires the retention of a copy of the SWPPP at the construction site (or other local accessible location) from the date construction commences to the date of termination of permit coverage. The Permittee with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site.

19. Section 6.4 of the Permit requires all reasonable steps be taken to minimize or prevent any discharge in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

20. Section 6.14 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 to achieve compliance with the conditions of the Permit and with the requirements of the SWPPP.

21. On November 4, 2009, representatives of EPA in conjunction with TDEC, conducted a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Site 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 TDEC Permit.

22. As a result of the CSWEI, EPA, Region 4 determined that storm water associated with industrial activity was discharged from the Site within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342 (p), and its implementing regulations.

23. During the CSWEI, EPA observed the following:

- A. Shelby County failed to retain a SWPPP on-site and failed to post a contact phone number if the SWPPP was located off-site in accordance with Sections 3.3.1 and 5.2 of the Permit. Shelby County also failed to post near the main entrance of the construction site that is accessible to the public: (1) the Notice of Coverage with the NPDES Permit Number; (2) name, company name, email address (if available), telephone number, and address of the project site owner or local contact person; (3) a brief description of the project; and (4) the location of the SWPPP if it was not

located on-site, in accordance with Section 3.3.2 of the Permit.

- B. Shelby County failed to design and implement erosion prevention and sediment controls in accordance with Sections 3.5.3.1 and 6.14 of the Permit. Silt fences throughout the Site were not maintained, the majority of the culverts were not protected, erosion controls were not established, and the Site was not stabilized within fifteen (15) days of disturbance.
- C. Shelby County failed to establish proper entrance/exit controls as to prevent off-site vehicle tracking of sediments and the generation of dust, in accordance with Section 3.5.5 of the Permit.
- D. Shelby County failed to maintain inspection documentation on-site, and failed to keep copies of the inspector certification or training records on-site, in accordance with Sections 3.5.8.1 and 3.5.8.2 of the Permit.
- E. Shelby County failed to design, install, and maintain erosion controls, by not stabilizing the soils on the Site, and by not containing and/or controlling storm water run-off, as required by Sections 4.3.2 and 6.4 of the Permit. Sediment discharges were observed in the unnamed tributaries of Grays and Marys Creeks.

24. Therefore, Shelby County has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the TDEC Permit, and also for discharges not authorized by the TDEC Permit.

III. Stipulations and Findings

25. 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.

26. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits or denies the factual allegations set out above.

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

28. 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.

29. 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.

30. 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.

31. 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

32. 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 THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) is an appropriate civil penalty to settle this action.

33. 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

34. 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 Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

36. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

37. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

38. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

39. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an

enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

40. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

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

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

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

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

For Complainant:

Wayne Lee
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9523

For Respondent:

Janet L. Shipman
Assistant County Attorney
Memphis and Shelby County Health Dept.
814 Jefferson Avenue
Memphis, Tennessee 38105
(901) 544-6802

45. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

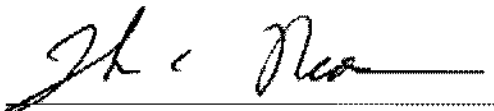
46. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Tennessee was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

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

AGREED AND CONSENTED TO:

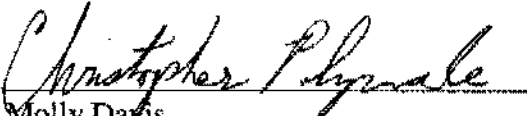
For RESPONDENT:



Date: March 25, 2011

NAME: Thomas E. Needham P.E.
TITLE: Director Public Works
County Engineer

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Date: 4/7/11

Molly Davis
Acting Chief
Clean Water Enforcement Branch
Water Protection Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF:)
) CONSENT AGREEMENT AND
SHELBY COUNTY, TENNESSEE) FINAL ORDER
HOUSTON LEVEE ROAD IMPROVEMENT)
MEMPHIS, TENNESSEE)
)
RESPONDENT.) DOCKET NO. CWA-04-2011-4502(b)
<hr/>)

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: May 12, 2011



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 **_Houston Levee Road Improvement**, Docket No. CWA-04-2011-4502(b) filed with the Regional Hearing Clerk on **MAY 12 2011** 2011, was served on **MAY 12 2011** 2011, in the manner specified to each of the persons listed below.

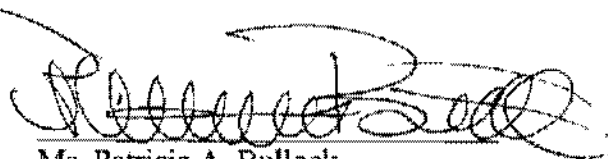
By hand-delivery:

Wayne Lee
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:

Thomas E. Needham, P.E., Director
Shelby County Division of Public Works
160 North Main Street, Suite 801
Memphis, Tennessee 38103

Paul Davis
Director, Division of Water Pollution Control
Tennessee Department of Environment and Conservation
401 Church Street
L & C Annex, 6th Floor
Nashville, Tennessee 37243-1534



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 4/5/11
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS. Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
 SF Judicial Order/Consent Decree. FMS COLLECTS. Other Receivables
 This is an original debt. This is a modification.

PAYEE: Shelby County Houston Levee Road Improvements, Memphis, TN
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 37,500
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2011-4502 (b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

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/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044
 2. Originating Office (ORC)
 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 sent to:
1. Originating Office
 2. Designated Program Office
 3. Regional Hearing Clerk
 4. Regional Counsel

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2011-4502(b)

Total Amount Due: \$ 37,500

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____