



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 16 2010

CERTIFIED MAIL 70091680000201412036
RETURN RECEIPT REQUESTED

Mr. Bobby Knox
Shelby Concrete Inc.
5929 County Road 754
Clanton, Alabama 35045

Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-5516(b)

Dear Mr. Knox:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) that has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Sections V and VI.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Mr. Joel Strange of my staff at (404) 562-9455, or your attorney may contact Ms. Carol Baschon, Attorney Advisor, at (706) 355-8640.

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: U.S. Army Corps of Engineers, Mobile District, Birmingham Field Office
Alabama Department of Environmental Management

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Mr. Bobby Knox,
Clanton, Alabama

RESPONDENT

)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
)
)
) Docket No.: CWA-04-2010-5516(b)

2010 AUG 26 AM 11:15
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EPA REGION 4

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under 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*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) Part 22 (Part 22).

2. The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has redelegateated 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. Statutory and Regulatory Background

3. Section 309(g)(1)(A)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(A)(B), states "[w]henever, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)]."

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful." Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . ."

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

9. Federal regulations under 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

III. Allegations

10. The term “Discharge Area” means the jurisdictional waters that have been impacted either through filling or dredging as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is in wetlands that are adjacent to an unnamed tributary to Camp Branch. Camp Branch flows to Waxahatchie Creek which is a tributary of the Coosa River, a navigable water of the United States. The Discharge Area is located east of Highway 87, in Alabaster, Shelby County, Alabama, near latitude 33.194823° N and longitude 86.779539° W and is indicated on the enclosed Exhibits A and B.

11. The term “Site” means the parcel or parcels of land on which the Discharge Area is located.

12. Respondent, Mr. Bobby Knox, at all times relevant to this Consent Agreement and Final Order, was the owner and operator of the Site.

13. Mr. Bobby Knox is a person within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Commencing on or about April 2009 to the present, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for the expansion of a commercial concrete plant.

15. Respondent impacted approximately 0.5 acres of wetlands (Discharge Area) that are adjacent to an unnamed tributary to Camp Branch. Camp Branch flows to Waxahatchie Creek which is a tributary of the Coosa River, a navigable water of the United States.

16. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA § 502(6).

17. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA § 502(14).

18. Respondent's placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA § 502(12).

19. At no time during the discharge of dredged and/or fill material at the Discharge Area from April 2009 to the present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by the Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. Stipulations and Findings

21. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. Part 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of any argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. Part 22.13(b), this Administrative Consent Agreement and Final Penalty Order (CAFO) will simultaneously commence and conclude this matter.

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

24. Respondent consents to the assessment of and agrees to pay the administrative penalty as set forth in this CAFO and consents to the other conditions set forth in this CAFO.

25. By signing this CAFO, the Respondent certifies that the information he 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.

26. EPA reserves the right to assess and collect any and all civil penalties for any violation described in this Consent Agreement to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

27. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

V. Payment

28. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that twenty-five thousand (\$25,000) dollars is an appropriate civil penalty to settle this action.

29. Respondent shall submit full payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of the CAFO, 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 the Respondent and the Docket Number of this CAFO. Such payment shall be submitted by U.S. Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

For other payment options (Ex: Wire Transfers, Overnight Mail, ACH, and On Line) please refer to Attachment A.

30. 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 CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CAFO. Other than as expressed in this document, 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.

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

37. This CAFO applies to and is binding upon Respondent and any officers, directors, employees, agents, successors and assigns of the Respondent.

38. The obligation of the Respondent under this CAFO is joint and several.

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

40. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CAFO.

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

For Complainant:

Ms. Carol Baschon
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9528

For Respondent:

Mr. Bobby Knox
5929 County Road 754
Clanton, Alabama, 35045

42. The parties acknowledge and agree that this CAFO 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.

43. Under 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.

44. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

VII. Release by Respondent

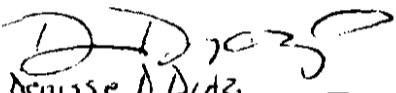
45. Respondent hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the Site or this CAFO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.

VIII. Effective Date

46. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

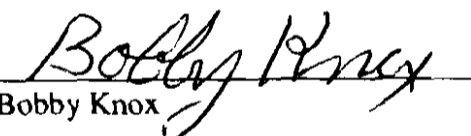
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Cesar A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 9/13/10

For RESPONDENT: Mr. Bobby Knox



Bobby Knox

Date: 7/28/2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) ADMINISTRATIVE
Mr. Bobby Knox,) CONSENT AGREEMENT AND
Clanton, Alabama,) FINAL PENALTY ORDER
)
)
RESPONDENT) Docket No.: CWA-04-2010-5516(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. Under 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



Susan B. Schub
Regional Judicial Officer

Date: Sept. 16, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2010-5516(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Joel Strange
Clean Water Enforcement Branch
Wetlands Enforcement Section
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By hand-delivery:

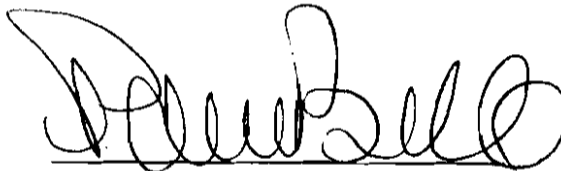
Carol Baschon
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By Certified mail,
Return receipt requested:

Mr. Bobby Knox
5929 County Road 754
Clanton, Alabama, 35045

Dated:

9-16-10



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

Exhibit A

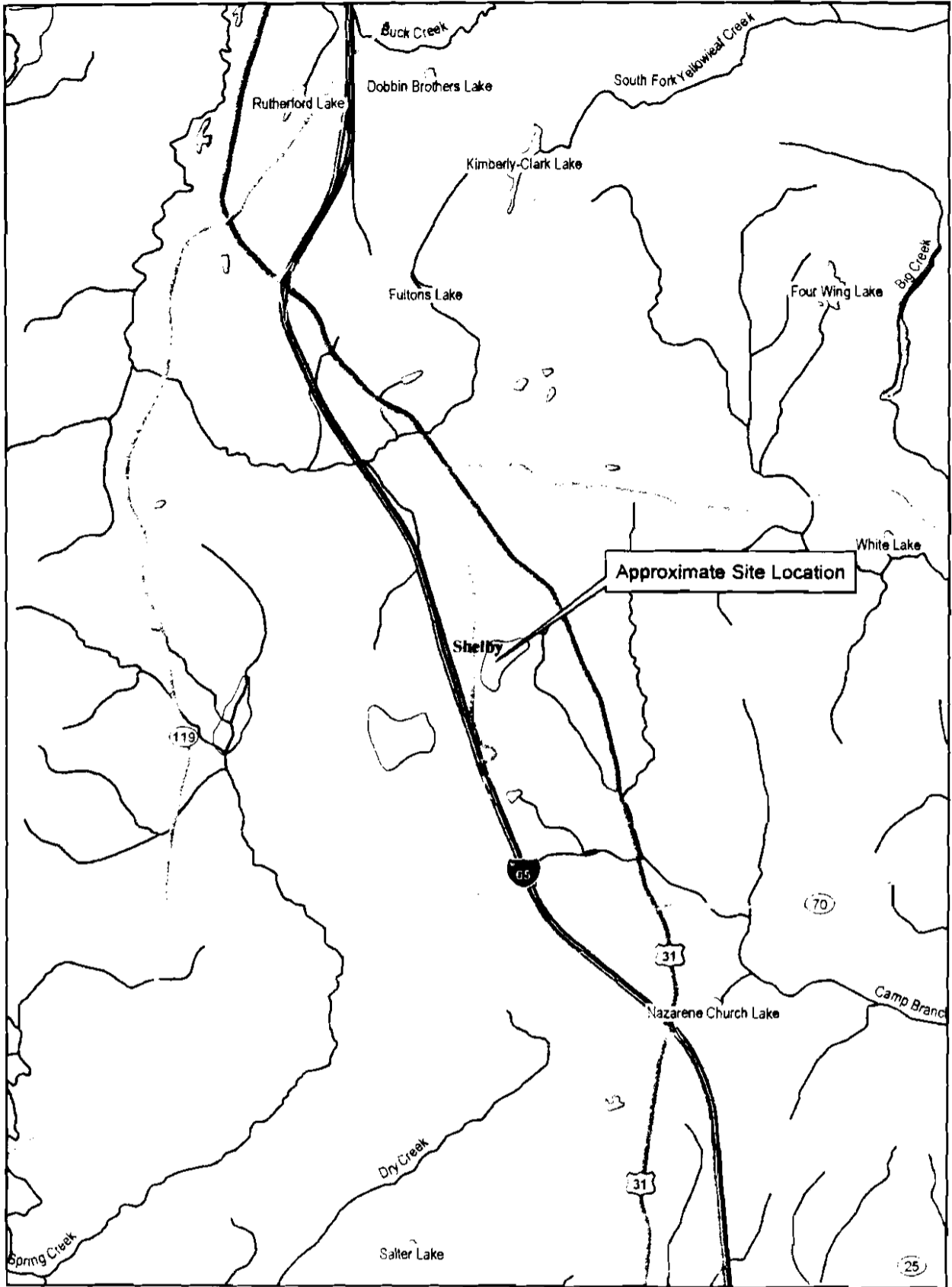


Exhibit B

