



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

**MAY 04 2007**

CERTIFIED MAIL 7004 1160 0000 8849 0444  
RETURN RECEIPT REQUESTED

Mr. Ken Dixon  
Southcreek Builders, LLC  
340 New Byhalia Road, Suite 3  
Collierville, TN 38017

SUBJ: Consent Agreement and Final Order  
Docket No. CWA-04-2007-4508(b)  
Southcreek Place Subdivision  
Olive Branch, Mississippi

Dear Mr. Dixon:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order which has been finalized by the 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 Ms. Susan Pope at (404) 562-9770.

Sincerely,

A handwritten signature in cursive script that reads "David Parker".

for

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: Mississippi Department of Environmental  
Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

SOUTHCREEK BUILDERS, LLC )  
Southcreek Place Subdivision )  
Olive Branch, Mississippi )

RESPONDENT. )

HEARING CLERK  
2007 MAY -4 AM 10:44  
RECEIVED  
EPA REGION IV

) CONSENT AGREEMENT AND  
) FINAL ORDER

) DOCKET NO. CWA-04-2007-4508(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, Southcreek Builders, LLC ("Respondent"), was a limited liability corporation duly organized and existing under the laws of the State of Mississippi 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 Southcreek Place Subdivision ("Facility") located on Stateline Road in Olive Branch, Mississippi.

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 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. The MDEQ issued the *Large Construction Storm Water General Permit For Land Disturbing Activities of Five or More Acres to Discharge Storm Water in Accordance with the National Pollutant Discharge Elimination System (NPDES)*, Permit No. MSR100000 (“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 Permit is a Mississippi statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, filling and excavation activities that result in land disturbance of five (5) acres or more, or less than five (5) acres if part of a “larger common plan of development or sale.”

9. On May 27, 2005, Respondent submitted a LCNOI requesting permit coverage to the MDEQ. A Notice of Coverage was sent to Respondent with an effective date of August 2, 2005, and an expiration date of May 31, 2010.

10. Section ACT6, Condition T-1 of the Permit requires the Permittee to develop and implement a SWPPP to 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 of the Permit requires the Permittee to list and describe controls appropriate for the construction activities as well as the procedures for implementing such controls in the SWPPP. The controls shall to the extent practicable:

- A. Condition T-2(1) - Divert up - slope water around disturbed areas of the site;
- B. Condition T-2(2) - Limit the exposure of disturbed areas to the shortest amount of time possible;

C. Condition T-2(3) - Minimize the amount of surface area that must be disturbed;

D. Condition T-2(4) - Implement BMPs to mitigate adverse impacts from storm water runoff; and

E. Condition T-2(5) - Remove sediment that would contribute to or cause adverse impacts to waters from storm water before it leaves the site.

12. Section ACT6, Conditions T-3 and T-4 of the Permit requires the Permittee to address the following minimum components in the SWPPP:

A. Condition T-3(1) - Vegetative practices shall be designed to preserve existing vegetation where possible and re-vegetate disturbed areas as soon as practicable after grading or construction. When a disturbed area will be left undisturbed for 30 days or more, the appropriate temporary or permanent vegetative practices shall be implemented within seven calendar days.

B. Condition T-3(2) - Structural practices shall divert flows from exposed soils, store flows, or otherwise limit runoff from exposed areas.

C. Condition T-4(3) - For drainage locations that serve an area with ten or more disturbed acres at one time, a temporary (or permanent) sediment basin providing at least 3600 cubic feet (133 cubic yards) of storage per acre drained shall be provided until final stabilization of the site. Sediment basins must be installed before major site grading.

D. Condition T-4(4) - A description of any post-construction control measures that shall be installed to control pollutants in storm water after construction is complete. Where needed, velocity dissipation devices shall be placed at detention or retention pond outfalls and along the outfall channel to provide for a non-erosive flow.

13. Section ACT6, Condition T-5 of the Permit requires the Permittee to identify all allowable sources of non-storm water discharges and identify and ensure the implementation of appropriate BMPs in the SWPPP.

14. Section ACT6, Condition T-7 of the Permit requires the Permittee to prepare a sealed site map showing original and proposed contours, drainage patterns, adjacent receiving water bodies, north arrows, all erosion and sediment controls, any post-construction control measures, and location of housekeeping practices in the SWPPP.

15. Section ACT6, Condition T-8 of the Permit requires the Permittee 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 in the SWPPP.

16. Section ACT6, Condition T-10 of the Permit requires the Permittee to describe in the SWPPP procedures to maintain vegetation, erosion and sediment controls and other protective measures. Procedures shall provide that all erosion controls are inspected weekly for a minimum of four inspections per month.

17. Section ACT7, Conditions S-1 and S-2 of the Permit requires the Permittee to:

A. Condition S-1(1) - Implement the SWPPP and retain a copy of the SWPPP at the permitted site or make the SWPPP locally available;

B. Condition S-1(2) - Ensure that appropriate BMPs are in place upon commencement of construction;

C. Condition S-1(4) - Amend the SWPPP whenever there is a change in design, construction, operation, or maintenance which may potentially affect the discharge of pollutants to waters; or when the SWPPP proves to be ineffective in controlling storm water pollutants;

D. Condition S-1(6) - Install additional and/or alternative erosion and sediment controls when existing controls prove to be ineffective in preventing sediment from leaving the site;

E. Condition S-1(7) - Minimize off-site vehicle tracking of sediments; and

F. Condition S-2(9) - Maintain all erosion controls. Except for sedimentation basins, all accumulated sediment shall be removed from structural controls when sediment deposits reach one-third to one-half the height of the control.

18. Section ACT7, Condition S-4 of the Permit requires the Permittee to perform inspections of the construction site at least weekly for a minimum of four inspections per month, and as often as is necessary to ensure that appropriate erosion and sediment controls have been properly constructed and maintained, and determine if additional or alternative control measures are required

19. Section ACT8, Condition L-1 of the Permit requires the Permittee to ensure 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.

20. Section ACT11, Condition T-2 of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which is likely to adversely affect human health or the environment.

21. Section ACT12, Condition T-12 of the Permit requires the Permittee to at all times properly operate and maintain 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.

22. On March 29, 2006, representatives of EPA in conjunction with the City of Olive Branch 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. § 122.26, and the MDEQ Permit.

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

24. As a result of the CSWEI, EPA alleges the following:

A. The SWPPP was not available for review; the City of Olive Branch provided a SWPPP for use during the inspection. The SWPPP provided did not identify operators at the site, contained no sequence of construction events, no direction of storm water flow or slopes, no receiving waters were identified, and it did not address post-construction issues.

B. There were no records available for review.

C. There was no silt fencing along Stateline Road and the road nearest lot no. 44. No silt fences were observed at the sedimentation pond constructed in the stream. Fencing was also absent from the areas discharging into the unnamed tributary from the east box culvert to the east property line and near lot no. 86.

D. Storm drain protection near lot nos. 59 and 60 was in need of maintenance.

E. Rip rap was needed in the channel from the east box culvert to the east property line.

F. Temporary outlet protection for the re-routed discharge during the construction of the east box culvert was needed.

G. There were no BMPs in place at the stream crossings.

H. No stabilization was provided to banks, slopes and other denuded areas.

K. Sediment was observed in the streets.

L. Sediment was observed in the unnamed tributary to Johns Creek.

25. 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 the Permit and also for discharges not authorized by the Permit.

### **III. Stipulations and Findings**

26. 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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**

33. 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 Ten Thousand Dollars (\$10,000) is an appropriate civil penalty to settle this action.

34. 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  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099.

35. 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, GA 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
Water Management Division  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960.

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

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

38. 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**

39. 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.

40. 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.

41. 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.

42. 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.

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

44. 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.

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

46. 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  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9533.

For Respondent:

Ken Dixon  
Southcreek Builders, LLC  
340 New Byhalia Road  
Suite 3  
Collierville, TN 38017

47. 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.


48. 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**

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

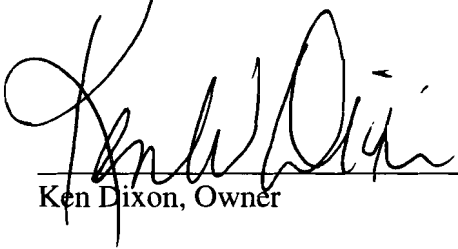
**AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

*for*   
\_\_\_\_\_  
Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA, Region 4

Date: April 3, 2007

For RESPONDENT, SOUTHCREEK BUILDERS, LLC:

  
\_\_\_\_\_  
Ken Dixon, Owner

Date: 2/21/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

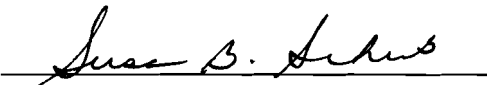
IN THE MATTER OF: )  
 )  
SOUTHCREEK BUILDERS, LLC ) CONSENT AGREEMENT AND  
 ) FINAL ORDER  
Southcreek Place Subdivision )  
Olive Branch, Mississippi )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2007-4508(b)  
\_\_\_\_\_ )

**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: May 3, 2007

  
\_\_\_\_\_  
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 Southcreek Builders, LLC, Docket No. **CWA-04-2007-4508(b)** (filed with the Regional Hearing Clerk on MAY 04 2007), was served on MAY 04 2007, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

By certified mail,  
return receipt requested: Ken Dixon, Owner  
Southcreek Builders, LLC  
340 New Byhalia Road  
Suite 3  
Collierville, TN 38017

Don Watts, Chief  
Environmental Compliance and Enforcement Division  
Mississippi Department of Environmental Quality  
P. O. Box 10385  
Jackson, MS 39289-0385



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 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 3/14/07  
(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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Southcreek Place Subdivision, Olive Branch, MS  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 10,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2007-4508(6)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: WMD

**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)<br>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)    |