



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

AUG 24 2011

CERTIFIED MAIL 7005 2570 0001 4886 8687
RETURN RECEIPT REQUESTED

Shelby County Schools
c/o Mr. P. Michael Simpson
Chief of Operations
2800 Grays Creek Drive
Arlington, Tennessee 38002

Re: Consent Agreement and Final Order
Docket No. CWA-04-2011-4514(b)
Shelby County Schools Administration Building
Arlington, Tennessee

Dear Mr. Simpson:

Enclosed is 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 problems, please contact Mr. Don Joe at (404) 562-9751.

Sincerely,

A handwritten signature in cursive script that reads "Christyler P. Diaz for".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: TDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
SHELBY COUNTY SCHOOLS) CONSENT AGREEMENT AND
SHELBY COUNTY SCHOOLS) FINAL ORDER
ADMINISTRATION BUILDING)
ARLINGTON, TENNESSEE) DOCKET NO. CWA-04-2011-4514(b)
)
RESPONDENT.)
_____)

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OFFICE OF ENFORCEMENT
ARLINGTON, TENNESSEE
Regional Hearings Clerk
D

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. 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 the EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Shelby County Schools ("Respondent"), was a government entity 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 Shelby County Schools Administration Building ("Development"), which is located at 2800 Grays Creek Road in Arlington, 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 the 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. The 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 June 23, 2009, the Respondent submitted an NOI requesting permit coverage to TDEC. A Notice of Coverage was sent to the Respondent with an effective date of August 3, 2009, and an expiration date of May 30, 2010.

10. Section 3.1 of the Permit requires the Respondent to implement the Stormwater Pollution Prevention Plan (“SWPPP”) as written from commencement of construction activity until final stabilization is complete.

11. Section 3.3.1 of the Permit requires the retention of the SWPPP on-site at the location which generates the stormwater discharge. If the site is inactive or does not have an on-site location adequate to store the SWPPP, the Permit provides that 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.

12. Section 3.4.1 of the Permit requires the Respondent to modify and update the SWPPP, *inter alia*, whenever inspections or investigations by site operators, state or federal officials indicate that the SWPPP is proving ineffective in eliminating or significantly minimizing pollutants or is otherwise not achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.

13. 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 stormwater 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 the relevant site situation;
- C. 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;
- D. 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 50 percent; and
- E. 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.

14. Section 3.5.3.2 of the Permit requires the SWPPP to include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. No stabilization, erosion control or sediment treatment measures are to be installed in a stream without obtaining an Aquatic Resource Alteration Permit ("ARAP"). Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed no later than fifteen (15) days after the construction activity in that portion of the site has temporarily or permanently ceased.

15. Section 3.5.3.3 of the Permit requires:

- A. The design of erosion prevention and sediment controls according to the size and slope of disturbed drainage areas with the goal of detaining runoff and trapping sediment. Erosion prevention and sediment controls shall be designed to control the rainfall and runoff from a two (2) year, twenty-four (24) hour storm, as a minimum; and
- B. The discharge structure from a sediment basin must be designed to retain sediment during lower flows.

16. Section 3.5.4 of the Permit requires the Respondent to:

- A. Include in the SWPPP a description of measure that will be installed during the construction process to control pollutants in stormwater discharges that will occur after construction operations have been completed; and
- B. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

17. 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 but in no case more than seven (7) days after the need is identified.

18. Section 3.5.8.2 of the Permit provides that:

- A. Outfall points shall be inspected to determine whether erosion prevention and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking; and
- B. Inspections shall be documented and include the scope of the inspection, names and titles of personnel making the inspection, and the dates of the inspection. Inspection documentation will be maintained on-site and made available upon request.

19. 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. The stormwater discharge shall not cause an objectionable color contrast in the receiving water; and
- C. The stormwater 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.

20. Section 5.2 of the Permit requires the Respondent to retain 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 Respondent 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.

21. 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.

22. 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.

23. On November 2, 2009, representatives of the EPA in conjunction with TDEC performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at Respondent's Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26 and the TDEC Permit.

24. As a result of the CSWEI, the EPA has determined that Respondent discharged stormwater associated with industrial activity from its Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into Grays Creek and an unnamed tributary of Grays Creek, waters of the United States.

25. During the CSWEI, the EPA observed the following:

- A. The Respondent failed to retain a SWPPP on-site and/or failed to post near the main entrance of the construction site the location of the SWPPP in accordance with Sections 3.3.1 and 5.2 of the Permit.
- B. The Respondent had not updated the SWPPP to reflect current site conditions and to identify all operators as required by Section 3.4.1 of the Permit.
- C. The Respondent failed to maintain sufficient records pertaining to major grading activities in accordance with Section 3.5.3.1 of the Permit and failed to maintain complete records of all periodic inspections as required by Section 3.5.8.2 of the Permit. Specifically, the Respondent failed to document the outfall points, vehicle entrance and exit, scope of the inspections, and personnel conducting inspections.
- D. The Respondent failed to properly operate and maintain all facilities and systems of treatment and control in accordance with Sections 3.1 and 6.14 of the Permit. Specifically:

(1) Silt fences surrounding the Development were not properly maintained. A section of the silt fence on the west side had been toppled by a fallen tree. The silt fence in the outfall channel had failed and was in need of repair. Design

capacities of some sections of silt fencing had been reduced by more than fifty (50) percent. Section 3.5.3.1 states that sediment should be removed from sediment traps and silt fences when design capacity has been reduced by fifty (50) percent.

(2) Many of the street storm water drains and grates throughout the Development did not have sufficient protection as required by the SWPPP and Section 3.5.3.3 of the Permit.

(3) Velocity dissipation devices, as required by Section 3.5.4 of the Permit, were needed at the outfalls to prevent further erosion of the channel, which was resulting in sediment loss.

(4) The sediment basin did not have a riser pipe or an overflow structure installed as required by the SWPPP and did not appear to be adequately engineered to retain sediment. Section 3.5.3.3 of the Permit requires the discharge structure from a sediment basin to be designed to retain sediment during lower flows.

(5) Exposed soil in several areas around the Development, including the banks of the sediment basin, was in need of additional stabilization in accordance with Section 3.5.3.2 of the Permit.

E. The EPA observed sediment deposits up to seventeen (17) inches deep in the sediment basin outfall channel that connects to an unnamed tributary of Grays Creek, which passes through the Development. Significant sediment discharges were also observed in the unnamed tributary itself. The sediment discharges from the Development caused an objectionable color contrast in the unnamed tributary to Grays Creek, which is prohibited by Section 4.3.2 of the Permit. Therefore, the Respondent failed to take all reasonable steps to minimize or prevent any discharge in violation of the Permit that has the reasonable likelihood of adversely affecting the environment.

26. Therefore, the Respondent 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

III. Stipulations and Findings

27. Complainant and the 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.

28. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

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

30. The 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.

31. By signing this CA/FO, the 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. The 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.

32. The 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 the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

33. Complainant and the 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

34. 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, the EPA has determined that ten thousand dollars (\$10,000.00) is an appropriate civil penalty to settle this action.

35. The 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 the 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

36. At the time of payment, the 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

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

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

38. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the 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 the 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 the 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 the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the 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 the 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 the 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 the 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 the Respondent and its officers, directors, employees, agents, successors and assigns.

44. 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 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:

Rolando Bascumbe
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9545

For Respondent:

P. Michael Simpson
Chief of Operations
Shelby County Schools
2800 Grays Creek Drive
Arlington, Tennessee 38002
(901) 321-2270

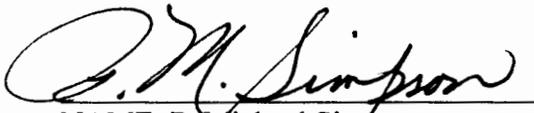
47. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

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 Tennessee 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.

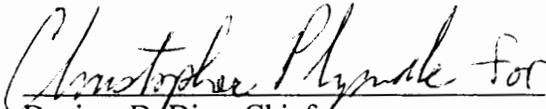
For RESPONDENT, SHELBY COUNTY SCHOOLS:


NAME: P. Michael Simpson
TITLE: Chief of Operations

Date: 6/17/2011

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


Denisse D/Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 7/1/11

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

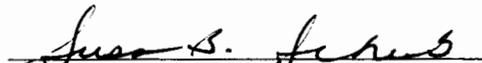
IN THE MATTER OF:)
)
SHELBY COUNTY SCHOOLS) CONSENT AGREEMENT AND
SHELBY COUNTY SCHOOLS) FINAL ORDER
ADMINISTRATION BUILDING)
ARLINGTON, TENNESSEE) DOCKET NO. CWA-04-2011-4514(b)
)
RESPONDENT.)
_____)

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), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: August 23, 2011


Susan B. Schub
Regional Judicial Officer

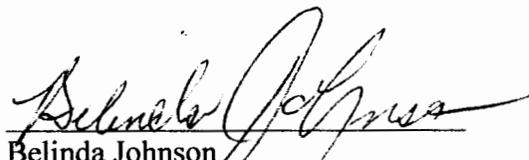
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Shelby County Schools, Docket No. CWA-04-2011-4514(b) (filed with the Regional Hearing Clerk on 8/24, 2011, was served on August 24, 2011, in the manner specified to each of the persons listed below.

By hand-delivery: Rolando Bascumbe
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: P. Michael Simpson
Chief of Operations
Shelby County Schools
2800 Grays Creek Drive
Arlington, Tennessee 38002

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


Belinda Johnson
Acting Regional Hearing Clerk
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511