



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 13 2008

CERTIFIED MAIL 7008 1140 0003 1135 2749
RETURN RECEIPT REQUESTED

Ms. Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Re: Administrative Complaint and Notice of Proposed Penalty Assessment
Docket No. CWA-04-2008-4535
BBS Builders and Development Company, LLC
Mitchiner Hills Subdivision
Clayton, North Carolina

Dear Ms. Sullins:

Enclosed is a copy of the Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency (EPA) is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to BBS Builders and Development Company, LLC for violations at its construction site known as Mitchiner Hills Subdivision. In the Complaint, EPA proposes to assess Class II administrative penalties of up to \$57,000 for violations of the CWA.

Because the violations have occurred in the State of North Carolina, EPA is offering you an opportunity to confer with us regarding the proposed assessment. If you wish to request a conference, or if you have any comments or questions regarding the matter, you may call me at (404) 562-9328, or your staff may call Mr. Ken Kwan at (404) 562-9752. A request for a conference may be in person or by telephone and may cover any matters relevant to the proposed assessment.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giatinna".

James D. Giatinna
Director
Water Management Division

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 13 2008

CERTIFIED MAIL 7008 1140 0003 1135 2756
RETURN RECEIPT REQUESTED

Mr. Taylor Greene
BBS Builder & Development Company, LLC
4367 U.S. 301 North
Dunn, North Carolina 28334

Re: Administrative Complaint and Notice of Proposed Penalty Assessment
Docket No. CWA-04-2008-4535
Mitchiner Hills Subdivision
Clayton, North Carolina

Dear Mr. Greene:

Enclosed is a document entitled Administrative Complaint and Notice of Proposed Penalty Assessment (Complaint) which the U.S. Environmental Protection Agency (EPA) is issuing pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. 1319(g), to BBS Builders and Development Company, LLC for violations at its construction site known as Mitchiner Hills Subdivision. The Complaint alleges that BBS Builders and Development Company, LLC failed to meet the requirements of the North Carolina *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System* (Permit), NPDES Permit No. NCG010000, in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. The Complaint requests that a civil penalty of up to \$57,000 be assessed for these violations.

A copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) Part 22, published at 64 *Fed. Reg.* 40176 (July 23, 1999), which apply to this case, is enclosed for your reference.

Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.15(c), you may request a hearing regarding any material fact alleged in the Complaint and on the proposed penalty assessment. The procedures for the hearing, if one is requested, are set out at 40 C.F.R. Part 22.

In order to be entitled to a hearing under the CWA, you must file an Answer to the Complaint within thirty (30) days after receipt of this Complaint as outlined in Section VI of the

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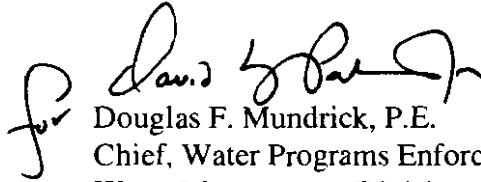
Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations of the Complaint with regard to which you have any knowledge. If you fail to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, you may be found in default. For purposes of this action, default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to a hearing on such factual allegations. In that case, a civil penalty will be assessed against you and will become due and payable without further proceedings after a Final Order of Default is issued pursuant to 40 C.F.R. § 22.17.

In addition, failure to pay the assessed penalty may subject you to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

You may request an informal meeting with EPA to discuss settlement of this action by contacting Ms. Susan Hansen, Associate Regional Counsel, at (404) 562-9700. You have the right to be represented by an attorney at any stage of the proceedings, including in any informal discussions with EPA. Please note that a request for an informal settlement conference does not extend the thirty (30) day period in which to submit an Answer to this Complaint.

If you have any questions, please contact Ms. Hansen at (404) 562-9700.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick". The signature is written in a cursive style with a large initial "D" and "M".

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

Enclosures

cc: North Carolina Department of Environment
and Natural Resources
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
Division of Land Resources
bcc: Regional Hearing Clerk
S. Hansen-OEA/OWLS
T. Shirley-Wright-OEA/OWLS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
BBS BUILDERS & DEVELOPMENT) ADMINISTRATIVE COMPLAINT
COMPANY, LLC) AND NOTICE OF PROPOSED
MITCHINER HILLS SUBDIVISION) PENALTY ASSESSMENT
CLAYTON, NORTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2008-4535
_____)

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EPA REGION 4

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED PENALTY ASSESSMENT**

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division ("Complainant").

3. Complainant hereby requests the assessment of a civil penalty against BBS Builders and Development Company, LLC ("Respondent"), and provides notice of Respondent's opportunity to request a hearing on the proposed penalty assessment for failure to comply with the requirements for storm water discharges, in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

II. Statutory and Regulatory Background

4. 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 permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (“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 North Carolina through the Department of Environment and Natural Resources (“NCDENR”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

6. The NCDENR issued a *General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System*, Permit No. NCG010000 (“Permit”) in accordance with North Carolina General Statute 143-215.1 and the CWA. The Permit was effective October 1, 2001, reissued on October 3, 2006, and expires September 30, 2008.

7. The NCDENR Division of Land Resources, Land Quality Section is responsible for the issuance, compliance and enforcement of North Carolina General Statute 113A-54.1, the rules adopted by the North Carolina Sedimentation Control Commission, and the approval of coverage under the Permit upon submission and approval of an Erosion and Sedimentation Control Plan (“Plan”) prior to commencement of construction.

III. Allegations

8. Respondent is a limited liability corporation duly organized and existing under the laws of the State of North Carolina and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

9. At all times relevant to this action, Respondent owned and/or operated a construction site known as Mitchiner Hills Subdivision (“Development”) located at Camel and Copper Streets, Clayton, North Carolina.

10. In July 2004, Respondent submitted a Plan to the NCDENR seeking approval coverage under the Permit. The NCDENR issued its approval of the Plan in July 2004.

11. Part I.A.2 of the Permit requires the Permittee to implement the Plan as approved. Deviation from the approved Plan shall constitute a violation of the terms and conditions of the Permit.

12. Part I.B.1 of the Permit requires the Permittee to inspect all storm water runoff discharges at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event greater than 0.5 inches of rain per twenty-four (24) hour period, and requires that a rain gauge be maintained on the site and a record of the rainfall amounts and dates be kept by the Permittee.

13. Part I.B.2 of the Permit requires the Permittee to inspect all storm water run-off discharges at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event greater than 0.5 inches of rain per twenty-four (24) hour period and take corrective action immediately to control the discharge of sediments if any visible sedimentation leaves the disturbed limits of the site.
14. Part I.B.3 of the Permit requires the Permittee to keep a record of inspections, that shall be made available upon request. Such record shall include visible sedimentation found outside the disturbed limits of the site, an explanation of measures taken to control future releases, and measures taken to clean up sediment beyond the disturbed limits of the site.
15. Part I.C.1 of the Permit requires the Permittee to comply with Final Limitations and Controls specified for storm water discharges once disturbance has begun on the site until completion of construction or development and establishment of a permanent groundcover.
16. Part I.C.2 of the Permit requires the Permittee to provide operation and maintenance necessary to operate storm water controls at optimum efficiency.
17. Part II.B.1 of the Permit requires the Permittee to comply with all conditions of the Permit, and provides that any Permit noncompliance constitutes a violation of the CWA.
18. Part II.B.2 of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health and the environment.
19. Part II.C.1 of the Permit requires the Permittee to properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of the Permit.
20. On April 10, 2006, Lots #1 through #30 were transferred by General Warranty Deed from Respondent to Mitchner Hills Developers, LLC.
21. On April 20, 2006, Lots #31 through #33 and #120 through #144 were transferred by General Warranty Deed from Respondent to Mitchner Hills Developers, LLC.
22. On June 22, 2007, S.P. Lucas of Lucas Enterprises, Inc. ("Lucas"), on behalf of Respondent's representative, Mr. James V. McLamb, submitted the General Warranty Deeds referenced in Paragraphs 20 and 21 above to NCDENR.
23. To date, Respondent has not amended its Plan to reflect the lots that it currently owns and has not submitted a new "Financial Responsibility / Ownership Form" to the North Carolina Division of Land Quality to reflect the change in ownership.

24. On September 27, 2006, representatives of EPA in conjunction with NCDENR performed a Compliance Storm Water Evaluation Inspection (“CSWEI”) at Respondent’s Development to evaluate the treatment and disposal of storm water in accordance with the CWA and the regulations promulgated thereunder at 40 C.F.R. § 126.26, and the NCDENR Permit.

25. As a result of the CSWEI, EPA, Region 4 has determined that Respondent discharged storm water associated with industrial activity from its Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 122.26, and the NCDENR Permit.

26. During the CSWEI, EPA inspectors observed the following:

- A. Check dams and diversion structures were not installed as specified in the approved Plan in violation of Part I.A.2 and Part I.C.1 of the Permit.
- B. Inspection records for routine and storm event inspections, rain gauge readings, visual observation of storm water discharge data, records of sediment discharges off-site, and measures to clean-up off-site sediment discharges were not available for review. Requirements for record-keeping are specified in Part I.B.1, Part I.B.2, and Part I.B.3 of the Permit.
- C. Silt fencing near lot #121 and lot #126 was overloaded with sediment and needed maintenance in violation of Part I.C.2 and Part II.C.1 of the Permit.
- D. Silt fence protection surrounding the storm drain near lot #47 had fallen and needed to be replaced, in violation of Part I.C.2 and Part II.C.1 of the Permit.
- E. Sediment trap #8 and sediment trap #10 were filled to capacity resulting in sediment discharging off-site, in violation of Part I.B.2, Part I.C.2, and Part II.B.2 of the Permit.

27. On October 2, 2006, NCDENR issued a Notice of Violation (“NOV”) to Respondent citing violations of the Sedimentation Pollution Control Act noted during its inspections on September 26, and 27, 2006.

28. On November 9, 2006, NCDENR issued an NOV to Respondent citing violations of the Surface Water Quality Standards (Title 15A NCAC 2B .0211) and violations of the Neuse Riparian Buffer Rules (Title 15A NCAC 2B .0233) noted during its inspection of September 26, 2006. Such violations stemmed from the release of sediments into two un-named tributaries to the Neuse River from land disturbing activities on the Development.

29. On April 26, 2007, EPA issued an Administrative Order (“AO”) to Respondent citing violations of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), for failure to comply with the Permit, and requiring immediate corrective action.

30. On May 16, 2007, EPA participated in a Show Cause meeting with Respondent, who was represented at the meeting by Lucas and Creedle Engineering Company.

31. On June 23, 2007, Respondent submitted correspondence referencing certain tasks that were being completed pursuant to the requirements of the AO; however, to date, Respondent has not provided documentation to show full compliance with all requirements of the AO.

32. On March 21, 2008, EPA sent correspondence to Lucas, on behalf of Respondent, requesting confirmation that all requirements of the AO had been completed, and initiating settlement discussions regarding an appropriate penalty for the cited violations.

33. On April 8, 2008, EPA received correspondence from Lucas, on behalf of Respondent, which provided no indication of intent to participate in penalty settlement discussions, and provided no additional information as to completion of the requirements of the AO.

34. On June 6, 2008, EPA sent correspondence to Respondent and Lucas reiterating the need for additional documentation to show compliance with the AO, explaining that additional documentation would need to be submitted to the State before responsibility for compliance with the Permit on these parcels could be transferred, and requesting Respondent to participate in penalty settlement discussions with EPA.

35. On June 11, 2008, Respondent refused delivery of EPA's June 6, 2008, correspondence.

36. On June 11, 2008, Mirando Jenkins signed for receipt of EPA's June 6, 2008, correspondence sent to Lucas, Respondent's consultant.

37. To date, EPA has received no response from, or on behalf of, Respondent with respect to EPA's June 6, 2008, correspondence.

38. Therefore, 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 Permit.

IV. Proposed Penalty Assessment

39. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess a penalty of up to \$11,000 per violation up to a maximum amount of \$157,500 for violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. *Civil Monetary Penalty Inflation Adjustment Rule*, 69 Fed. Reg. 7121 (February 13, 2004).

40. Based on the foregoing Allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant proposes that a penalty of up to \$57,000 be assessed against Respondent.

41. This penalty, as assessed, has taken into account the statutory penalty factors, as identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations, and Respondent's ability to pay, prior compliance history, degree of culpability, accrued economic benefit or savings, and such other matters as justice may require. With respect to severity of the violations described in the foregoing allegations, EPA states that the violations resulted in discharges of sediment into an unnamed tributary of the Neuse River. Further, the Respondent's lack of attention to its obligations under the Permit is demonstrated by the fact that NCDENR had to issue NOV's, and EPA had to issue an AO to prompt the Respondent to begin addressing the violations at the Development through proper implementation of BMPs, and restoration activities to address the water quality violations that resulted from the sediment discharges. NOV's were issued on October 2, 2006, and November 9, 2006.

V. Procedures Governing This Complaint

42. The rules of procedure governing this civil administrative litigation are set forth in the *Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, published at 64 Fed. Reg. 40176 (July 23, 1999).

43. Please be advised that 40 C.F.R. Part 22 prohibits any ex parte discussion of the merits of a case with, among others, the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer or Administrative Law Judge after the Complaint has been issued. 40 C.F.R. § 22.08.

VI. Answering This Complaint

44. Where Respondent intends to contest any material fact upon which this Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 4, both an original and one copy of a written Answer to the Complaint. Such Answer must be filed within thirty (30) calendar days after service of the Complaint at the address below:

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

40 C.F.R. § 22.15(a). Respondent shall also serve one copy of the Answer to the Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

45. A copy of the Answer and all other documents that Respondent files in this action should be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in this proceeding:

Susan Hansen
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

46. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense; (2) the facts that Respondent disputes and thus intends to place at issue in the proceeding; and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

47. Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

48. If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, a Default Order may be issued pursuant to 40 C.F.R. § 22.17(c).

49. Any penalty assessed in the Default Order shall become due and payable by Respondent without further proceedings thirty (30) calendar days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may seek to enforce such final Default Order against Respondent, and to collect the assessed penalty amount, in federal court.

VII. Opportunity to Request a Hearing

50. In its Answer, Respondent may request a hearing upon the issues raised by the Complaint and Answer. 40 C.F.R. § 22.15(c). If Respondent does not request a hearing, the

Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

51. Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

52. If Respondent fails to request a hearing in its Answer, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. See 16 U.S.C. § 2615(a)(3).

53. Should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, and only members of the public who submitted timely comments during the public notice period will have an additional thirty (30) days to petition EPA to set aside such Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

54. Neither assessment nor payment of an administrative penalty pursuant to the CWA shall affect Respondent's continuing obligation to comply with the CWA, any other federal or state laws, and with any separate Compliance Order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

VIII. Exhaustion of Administrative Remedies

55. The decision issued by the Presiding Officer after a hearing constitutes an initial decision. Likewise, a Default Order issued by the Presiding Officer constitutes an initial decision. Respondent has the right to appeal an adverse initial decision to the Environmental Appeals Board ("EAB"). Such an appeal must be made in accordance with 40 C.F.R. § 22.30(a)(1) within thirty (30) days after the initial decision is served. Note that the forty-five (45) day period provided in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to nor extend the thirty (30) days prescribed in 40 C.F.R. § 22.30(a)(1) for filing an appeal.

56. If Respondent fails to appeal an adverse initial decision to the EAB in accordance with 40 C.F.R. § 22.30 and that initial decision thereby becomes a final order pursuant to 40 C.F.R. § 22.27(c), Respondent will have waived its rights to judicial review. 40 C.F.R. § 22.27(d).

IX. Informal Settlement Conference

57. Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged; (2) any information relevant to Complainant's calculation of the proposed penalty; (3) the effect the proposed penalty would have on Respondent's ability to continue in business; and (4) any other special facts or circumstances Respondent wishes to raise. 40 C.F.R. § 22.18.

58. Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Susan Hansen
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9700

59. The parties may engage in settlement discussions regardless of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing in its Answer does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

60. A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

61. Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

62. Respondent's entering into a settlement through the signing of such Consent Agreement and Final Order, and its complying with the terms and conditions set forth in the such Consent Agreement and Final Order, terminate this administrative litigation and the civil

proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

X. Solution of This Complaint Without Hearing or Conference

63. Respondent may choose to resolve this proceeding at any time by paying the specific penalty assessment proposed in this Complaint in full, and by filing with the Regional Hearing Clerk a copy of the payment instrument. 40 C.F.R. § 22.18(a)(1).

64. If Respondent pays the proposed penalty assessment in full within thirty (30) days of the effective date of this Complaint, then no Answer need be filed. 40 C.F.R. § 22.18(a)(1).

65. If Respondent chooses to pay the proposed penalty assessment in full, Respondent shall submit a U.S. Government or certified check, paid to the order of the "Treasurer, United States of America," in the amount of \$57,000, to the following address:

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

Respondent must submit a copy of the payment instrument to:

Susan Hansen
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

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

66. Such payment in full of the penalty proposed in this Complaint terminates this administrative litigation and the civil proceedings arising out of the allegations made in this Complaint. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

67. For purposes of federal income taxation, Respondent shall not be entitled to claim a deduction for any penalty payment pursuant to this Complaint.

ISSUED THIS 13th DAY OF August, 2008
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4



James D. Giattina
Director
Water Management Division

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached ADMINISTRATIVE COMPLAINT AND NOTICE OF PROPOSED PENALTY ASSESSMENT in the matter of BBS Builders and Development Company, LLC, Docket No. CWA-04-2008-4535 (filed with the Regional Hearing Clerk on 8/13/08, 2008) was served on 8/13/08, 2008, in the manner specified to each of the persons listed below.

By hand-delivery: Susan Hansen
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Mr. Taylor Greene
BBS Builders and Development Company, LLC
4367 U.S. 301 North
Dunn, North Carolina 28334

Coleen Sullins
Director, Division of Water Quality
North Carolina Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617



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