



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 NOV -8 PM 3:57

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2011-0031

IN THE MATTER OF:

CAROTHERS CONSTRUCTION, INC.

RESPONDENT

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)
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 8th DAY OF November, 2011.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARINGS IN ERK

IN THE MATTER OF)

Carothers Construction, Inc.,)

Respondent.)

CONSENT AGREEMENT

Docket No. CWA-08-2011-0031

Complainant United States Environmental Protection Agency, Region 8 (EPA) and Carothers Construction, Inc. (Respondent) hereby consent and agree as follows:

1. On September 21, 2011, EPA issued an administrative complaint and notice of opportunity for hearing (complaint) alleging that Respondent violated the terms of a Clean Water Act National Pollutant Discharge Elimination System permit. The complaint proposed that Respondent pay an administrative civil penalty for those violations, pursuant to section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).
2. Respondent admits the jurisdictional allegations made in the complaint and neither admits nor denies the specific factual allegations made in the complaint.
3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the complaint or in this consent agreement.
4. This consent agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent. Any change in the ownership or operation of the site at issue, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This consent agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees to pay a civil penalty in the amount of nineteen thousand dollars (\$19,000.00) as follows. Payment shall be made in a single installment due no later than thirty calendar days from the date of the final order issued by the Regional Judicial Officer adopting this consent agreement. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date payment is made is considered to be the date processed by U.S. Bank, described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered received that day.

6. Payment shall be made by remitting a cashier's or certified check, or making a wire transfer or on-line payment, including the name and docket number of this case, payable to "Treasurer, United States of America" as follows:

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If payment is to be made by wire transfer, payment must be sent directly to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street, New York, NY 10045
Field Tag 4200 of Fedwire message should read "D 68010727
Environmental Protection Agency"

Payment may also be made on-line by accessing "www.pay.gov," searching for "sfo 1.1," and completing the required fields.

7. A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

David Gwisdalla
Enforcement Officer
Water Enforcement Program (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

8. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued). In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is

not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest; then to the outstanding principal amount.

6. Nothing in this consent agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

7. Any failure by Respondent to comply with any of the terms of this consent agreement shall constitute a breach of this consent agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this consent agreement and for such other relief as may be appropriate.

8. Nothing in this consent agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.

9. The individual signing this consent agreement on behalf of Respondent certifies that he is fully authorized to enter into this consent agreement and to bind Respondent to the terms and conditions of this consent agreement.

10. The parties agree to submit this consent agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

11. Each party shall bear its own costs and attorney fees in this matter.

12. This consent agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the United States' claims for civil penalties for the specific violations alleged in the complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: 11/1/2011

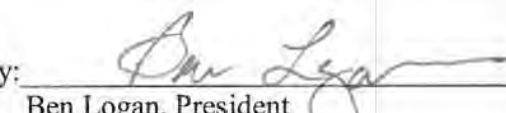
By: 
Arturo Palomares, Director
Water Technical Enforcement Program

Date: 11/3/11

By: 
Matthew Cohn, Director
Legal Enforcement Program

CAROTHERS CONSTRUCTION, INC.,
Respondent

Date: 10/18/11

By: 
Ben Logan, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **CAROTHERS CONSTRUCTION, INC., DOCKET NO.: CWA-08-2011-0031** was filed with the Regional Hearing Clerk on November 8, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Charles Figure, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 8, 2011, to:

Ben Logan, President
Carothers Construction, Inc.
Post Office Box 189
Taylor, Mississippi 38673

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 8, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk

