



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

JUN 05 2012

CERTIFIED MAIL 7009 1680 0001 4690 1664
RETURN RECEIPT REQUESTED

Mr. Kevin Sloan
30215 Canal Court
Orange Beach, Alabama 36561

Re: Consent Agreement and Final Order
Docket No. CWA-04-2012-5504(b)

Dear Mr. Sloan:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Administrator. Please make note of the provisions under Section V.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Laurie Lindquist, at (404) 562-9249, or Ms. Tanya Floyd, Attorney Advisor, at (404) 562-9813.

Sincerely,

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

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Mr. J. Eric Buckelew
U. S. Army Corps of Engineers, Mobile District

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

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

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

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

III. Allegations

10. The term “Discharge Area” means the jurisdictional waters that have been impacted either through filling or dredging as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area pertains to the impacts of approximately 22.9 acres of forested wetlands and approximately 3,300 linear feet of unnamed tributaries that flow into Pine Barren Creek located near 31°36'27" north latitude and 88°12'29" west longitude in Washington County, Alabama. The Discharge Area is indicated on the enclosed Exhibits A and B.

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

12. Larry Sloan Real Estate Company, LLC and Triple E Investments, LLC purchased parcels of land south of Washington County Road 34 in Section 5, Township 7 North, Range 2 West in Washington County, Alabama, (the Site) that contains the Discharge Area on June 11, 2007, and July 30, 2007. Kevin Sloan personally conducted and directed activities resulting in the discharge of dredged and/or fill material into waters of the United States at the Site. Therefore, Larry Sloan Real Estate Company, LLC, Triple E Investments, LLC, and Kevin Sloan (“Respondents”), at all times relevant to this Order, were the owners and/or operators of the Site.

13. Larry Sloan Real Estate Company, LLC is a limited liability company duly organized under the laws of the State of Mississippi and, as such, is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Triple E Investments, LLC is a limited liability company duly organized under the laws of the State of Alabama and, as such, is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Kevin Sloan is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Commencing on or about August 1, 2007, Respondents, and/or those acting on behalf of the Respondents discharged dredged and/or fill material into waters of the United States on the Site using trackhoes, bulldozers, and dump trucks during unauthorized activities associated with the construction of two dams and the creation of a 77 acre private recreational lake. To present, fill remains in place on the Site.

15. Respondents' unauthorized activities impacted approximately 3,300 linear feet of streams and 22.9 acres of forested wetlands that are adjacent to the Pine Barren Creek, which is a tributary to the Tombigbee River, a navigable water of the United States.

16. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA § 502(6), 33 U.S.C. § 1362(6).

17. The earth moving machinery, including, but not limited to, trackhoes, bulldozers, and dump trucks, employed by the Respondents to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA § 502(14), 33 U.S.C. § 1362(14).

18. A "discharge of a pollutant," as defined under the CWA § 502(12)(A), 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

19. Respondents' placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA § 502(12), 33 U.S.C. § 1362(12).

20. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the discharge of any pollutant into waters of the United States except as in compliance with certain sections of the CWA, including Section 404, 33 U.S.C. § 1344. A Section 404 permit is a legal prerequisite to discharges of the type described above.

21. At no time during the discharge of dredged and/or fill material at the Discharge Area from on or about August 1, 2007, to present, did the Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondents.

22. The discharges have, therefore, been made in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Each discharge by the Respondents of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

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

IV. Stipulations and Findings

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

26. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set out above and the factual allegations set out above.

27. Respondents hereby waive their right to contest the allegations set out above and their right to appeal the Final Order accompanying this Consent Agreement.

28. Respondents consent to the assessment of and agree to pay the administrative penalty as set forth in this CAFO and consent to the other conditions set forth in this CAFO.

29. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize 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.

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

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

V. Payment

32. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that ONE HUNDRED SIXTY-SEVEN THOUSAND AND FIVE HUNDRED DOLLARS (\$167,500.00) is an appropriate civil penalty to settle this action.

33. Respondents shall submit payment of the penalty specified in the preceding paragraph within 30 days of the effective date of this CAFO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondents and the Docket Number of this CAFO. Such payment shall be submitted by U.S. Postal Service to:

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

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

34. At the time of payment, Respondents shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

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

35. Civil penalty payments under this CAFO are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

36. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondents to pay the penalty assessed by the CAFO in full by its due date may subject the Respondents to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CAFO), 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 CAFO shall not be subject to review.

VI. General Provisions

37. This CAFO shall not relieve Respondents of their 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 CAFO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA.

38. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of United States to seek any other remedies or sanctions available by virtue of Respondents' violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any federal or state statute, regulation or permit.

39. Except as otherwise set forth in this document, this CAFO constitutes a settlement by Complainant and Respondents of all claims for civil penalties under the CWA with respect to only those violations alleged in this CAFO. Except as otherwise set forth in this document, compliance with this CAFO shall resolve the allegations of violations contained in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or other liability resulting from violations that were not alleged in this CAFO. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondents for violation of any federal or state statute, regulation, permit, or failure to comply with the terms of the Consent Agreement and Compliance Order entered into between the Respondents and Complainant on December 15, 2011 (Docket No. CWA-04-2011-5763), to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

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

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

42. The obligations of the Respondents under this CAFO are joint and several.

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

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

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

For Complainant:

Tanya Floyd
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9813

For Respondents:

Kevin Sloan
30215 Canal Court
Orange Beach, Alabama 36561

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

47. Under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

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

VII. Release by Respondents

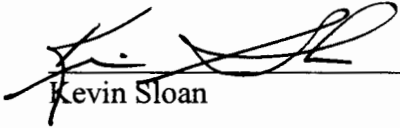
49. Respondents hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondents' property without compensation.

VIII. Effective Date

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

AGREED AND CONSENTED TO:

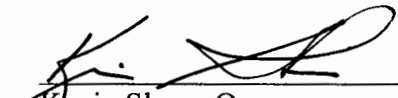
FOR RESPONDENT KEVIN SLOAN:



Kevin Sloan

Date: 4/5/12

**FOR RESPONDENT TRIPLE E, INVESTMENTS,
LLC:**



Kevin Sloan, Owner
Triple E Investments, LLC

Date: 4/5/12


**FOR RESPONDENT LARRY SLOAN REAL
ESTATE COMPANY, LLC:**



Larry Sloan, Owner
Larry Sloan Real Estate Company, LLC

Date: 4/5/2012

FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina
Director
Water Protection Division
U.S. EPA Region 4

Date: 5/30/12


**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	ADMINISTRATIVE
Kevin Sloan,)	CONSENT AGREEMENT AND
Triple E Investments, LLC, and)	FINAL PENALTY ORDER
Larry Sloan Real Estate Company, LLC,)	
Washington County, Alabama,)	
)	
)	
RESPONDENTS.)	Docket No.: CWA-04-2012-5504(b)
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FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondents are hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Gwendolyn Keyes Fleming
Regional Administrator
U.S. EPA, Region 4

Date: JUN 1 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2012-5504(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

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

By hand-delivery:

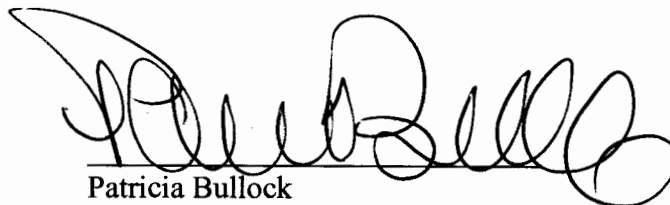
Tanya Floyd
Office of Environmental Accountability
Office of Water Legal Support
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By Certified mail,
return receipt requested:

Kevin Sloan
30215 Canal Court
Orange Beach, Alabama 36561

Dated:

6-5-12



Patricia Bullock
Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511