



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAY 10 2012

CERTIFIED MAIL 70060810000411311087  
RETURN RECEIPT REQUESTED

Mr. Kevin Harrington  
South Carolina Department of Transportation  
955 Park Street  
P.O. Box 191  
Columbia, South Carolina 29201

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2012-4505(b)  
National Pollutant Discharge Elimination System Permit No. SCR10L233  
US17A Roadway Widening; File #8.165B  
Berkeley County, South Carolina

Dear Mr. Harrington:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 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. Sara Schiff at (404) 562-9870.

Sincerely,

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

Enclosure

cc: Mr. John V. Walsh, P.E.  
Deputy Secretary of Engineering  
South Carolina Department of Transportation

Mr. David Wilson  
Chief, Bureau of Water  
South Carolina Department of Health  
and Environmental Control

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:** )  
 )  
**SOUTH CAROLINA DEPARTMENT OF** )  
**TRANSPORTATION** )  
**US 17A ROADWAY WIDENING** )  
**BERKELEY COUNTY, SOUTH** )  
**CAROLINA** )  
 )  
**RESPONDENT.** )

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**CONSENT AGREEMENT AND  
FINAL ORDER**

**DOCKET NO. CWA-04-2012-4505**

**RECEIVED  
EPA REGION IV  
2012 MAY 10 PM 2:24  
HEARING CLERK**

**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. The South Carolina Department of Transportation (SC DOT) is a state governmental agency existing under the laws of the State of South Carolina 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, the SC DOT owned a construction site known as US17A Roadway Widening (Development) located in Berkeley County, South Carolina.

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 South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The SCDHEC issued a *NPDES General Permit for Stormwater Discharges From Construction Activities That Are Classified As "Associated With Industrial Activity"*, Permit No. SCR100000 (Permit) in accordance with the South Carolina Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and the CWA. The Permit was effective September 1, 2006, and expired August 31, 2011.

8. The SCDHEC is responsible for the issuance of permits and for compliance and enforcement of the South Carolina Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and the CWA. Further SCDHEC is also responsible for the approval of coverage under the Permit upon submission and approval of a Notice of Intent (NOI) requesting Permit coverage and development and implementation of a Stormwater Pollution Prevention Plan (SWPPP).

9. On April 7, 2010, the SC DOT submitted to SCDHEC an NOI requesting permit coverage. A Notice of Coverage was sent to the SC DOT with an effective date of April 23, 2010, and an expiration date of April 23, 2015.

10. In accordance with South Carolina General Assembly Bill 4445, existing developments may have coverage under their current Permit extended past the expiration date of August 31, 2011. SCDHEC extended coverage for the Development.

11. Part 3.6.A of the Permit requires all erosion and sediment control measures and other protection measures be maintained in effective operating condition. If self-inspections identify Best Management Practices (BMPs) that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event.

12. Part 3.6.B of the Permit requires that if modification of existing BMPs or additional BMPs are necessary to comply with the requirements of the Permit or with water quality standards, such modifications or additions must be completed before the next storm event.

13. Part 3.10.E of the Permit requires inspections to include: all areas disturbed by construction activity; areas used for storage of materials that are exposed to precipitation; evidence of, or the potential for, pollutants entering the stormwater conveyance system; sedimentation and erosion control measures for proper operations; discharge locations to ascertain the effectiveness of erosion control measures; and locations where vehicles enter or exit for evidence of off-site sediment tracking.

14. Part 3.10.G of the Permit requires the completion of an inspection report which must include, at a minimum: (1) the inspection date; (2) names, titles and qualifications of personnel making the inspection; (3) weather information for the period since the last inspection, including the best estimate of the beginning, duration, and approximate amount of rainfall for each storm event (in inches) and whether any discharges occurred; (4) weather information and a description of any dischargers occurring at the time of the inspection; (5) locations of discharges of sediment or other pollutants; (6) locations of BMPs requiring maintenance; (7) locations of BMPs failing to operate as

designed or proven inadequate; (8) locations where additional BMPs are needed; and (9) corrective action required, including any changes to SWPPP and implementation data.

15. Part 3.11.A of the Permit requires an amendment to the SWPPP and map whenever there is a change in design, construction, operation or maintenance that will result in discharges that will cause, have the reasonable potential to cause or contribute to violations of water quality standards.

16. Part 3.13.A of the Permit requires control measures to be properly selected, installed and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

17. Part 3.13.B of the Permit requires the removal of off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts.

18. Part 3.13.D of the Permit requires initiation of stabilization measures as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.

19. Part 3.13.E of the Permit requires a combination of sediment and erosion control measures to achieve maximum pollutant removal.

20. Part 3.13.F of the Permit requires velocity dissipation devices at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course.

21. Part 4.4 of the Permit requires the selection, implementation and maintenance of BMPs that minimize pollutants in the discharge or as necessary to meet water quality standards.

22. On March 29, 2011, representatives of the EPA in conjunction with South Carolina Department of Health and Environmental Control-Ocean and Coastal Resource Management (SCDHEC-OCRM) performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 126.26 and the SCDHEC Permit.

23. As a result of the CSWEI, the EPA, Region 4 has determined stormwater associated with industrial activity was discharged from its Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into the Canterhill Swamp thence to the Cooper River, a navigable water of the United States.

24. During the CSWEI, the EPA inspectors provided a copy of an “NPDES Inspection Observation Form” to the U.S. Group Inc., SC DOT’s contractor representative, Mr. Stephen Ulrey. As noted on the “NPDES Inspection Observation Form” and in the CSWEI Report, the following was observed:

- A. Sediment was observed within waters of the United States at Outfall Ditches #5 and #9. BMPs were not selected, installed and maintained to prevent

sediment-laden stormwater from discharging offsite, allowing sediment to accumulate in the waterbodies. Parts 3.13.E and 4.4 of the Permit require BMPs be selected, implemented and maintained to achieve maximum pollutant removal. Accumulated sediment was also not removed as required by Part 3.13.B of the Permit.

- B. The site deviated from the approved SWPPP by not installing all permitted BMPs, including sediment traps and check dams near the road crossings. The SWPPP and map were not updated to show which BMPs were not installed as required by Part 3.11.A of the Permit.
- C. BMPs, such as check dams, to protect outfall channels from erosive flow were not installed as required by the approved SWPPP and Part 3.13.F of the Permit.
- D. Portions of the Development where construction activities had temporarily or permanently ceased were not stabilized within fourteen (14) days as required by Part 3.13.D of the Permit.
- E. BMPs, including silt fencing, throughout the Development were not properly installed and maintained as required by Parts 3.6.A, 3.6.B, 3.13.A and 4.4 of the Permit. For example, sediment was not removed as it accumulated along silt fencing and rills along slopes were not repaired.
- F. Inspection reports reviewed during CSWEI focused on silt fencing and did not include observations and information on other BMPs throughout the Development as required by Parts 3.10.E and 3.10.G of the Permit.

25. Therefore, the SC DOT violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the SCDHEC Permit.

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

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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**

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, the EPA has determined that twenty-one thousand dollars (\$21,000) is an appropriate civil penalty to settle this action.

34. The Respondent shall submit payment of the penalty specified in the preceding paragraph within 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

35. 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  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

And

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
Clean Water Enforcement Branch  
Municipal and Industrial Enforcement Section  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

37. 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**

38. 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.

39. 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.

40. 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.

41. 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.

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

43. 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.

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

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

For Complainant:

Mr. Wayne Lee  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9523

For the Respondent:

Mr. John V. Walsh, P.E.  
Deputy Secretary of Engineering  
South Carolina Department of Transportation  
955 Park Street  
P.O. Box 191  
Columbia, South Carolina 29201  
(803) 737-7900



46. 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.

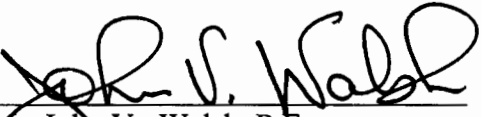
47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of South Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

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

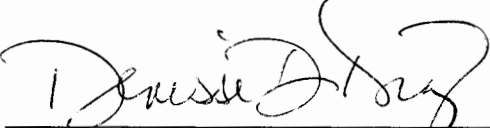
**AGREED AND CONSENTED TO:**

**For RESPONDENT, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION:**

  
\_\_\_\_\_  
Mr. John V. Walsh, P.E.  
Deputy Secretary of Engineering  
South Carolina Department of Transportation

Date: 2/27/2012

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

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

Date: 5/8/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
SOUTH CAROLINA DEPARTMENT OF ) CONSENT AGREEMENT AND  
TRANSPORTATION ) FINAL ORDER  
US 17A ROADWAY WIDENING )  
BERKELEY COUNTY, SOUTH )  
CAROLINA )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2012-4505(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*, 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: May 10, 2012

  
\_\_\_\_\_  
Ms. 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 \_\_\_\_\_, Docket No. CWA-04-2012-4505(b) (filed with the Regional Hearing Clerk on **MAY 10 2012** 2012, was served on **MAY 10 2012**, 2012, in the manner specified to each of the persons listed below.

By hand-delivery: Mr. Wayne Lee  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested: Mr. John V. Walsh, P.E.  
Deputy Secretary of Engineering  
South Carolina Department of Transportation  
955 Park Street  
P.O. Box 191  
Columbia, South Carolina 29201

Mr. David Wilson  
Chief, Bureau of Water  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201



Ms. Patricia A. 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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM  
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 3/15/12  
[Name] [Date]  
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733  
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.  Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.  
 SF Judicial Order/Consent Decree. FMS COLLECTS.  Other Receivables  
 This is an original debt.  This is a modification.

PAYEE: SCDOT US 17A Roadway Widening, Berkeley County, SC  
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 21,000  
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2012-4505b)

The Site-Specific Superfund (SF) Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_  
If you have any questions call: \_\_\_\_\_ in the Financial Management Section,  
Telephone Number: \_\_\_\_\_

=====

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/RH 1647<br>P.O. BOX 7611, Benjamin Franklin Station<br>Washington, DC 20044 | 2. Originating Office (ORC)<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 sent to:

- |  |   |
|--|---|
| 1. Originating Office<br>3. Regional Hearing Clerk | 2. Designated Program Office<br>4. Regional Counsel |
|--|---|

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM  
PROGRAM SPECIFIC INFORMATION

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Case Docket Control Number: CWA-04-2012-4505(b)

Total Amount Due: \$ 21,000

Full payment due within 30 days of the effective date of the CAFO.

           Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____