



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

JUN 09 2009

CERTIFIED MAIL 7008 2810 0000 4316 9812
RETURN RECEIPT REQUESTED

Mr. Sherwood Lucas
1325 Pope Road
Dunn, North Carolina 28334-5869

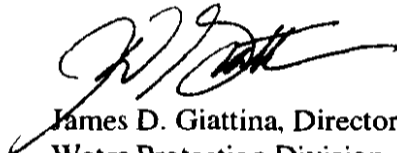
Re: Consent Agreement and Final Order No. CWA-04-2008-4535
BBS Builders and Development Company, LLC
Mitchner Hills Subdivision

Dear Mr. Lucas:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency. Please make note of the provisions under Section IV regarding payment. The first penalty payment is due within one month of the effective date of the Consent Agreement and Final Order.

Should you have any questions, please contact Judy Marshall at 404-562-9533.

Sincerely,



James D. Giattina, Director
Water Protection Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
BBS BUILDERS & DEVELOPMENT)	FINAL ORDER
COMPANY, LLC)	
)	DOCKET NO. CWA-04-2008-4535
RESPONDENT.)	
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RECEIVED
 CIVIL PENALTIES
 2009 JUN -9 PM 12:23
 REGIONAL CLERK

CONSENT AGREEMENT

I. Statutory Authority

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").

II. Allegations

3. At all times relevant to this action, BBS Builders & Development Company, LLC ("Respondent") was a corporation doing business in the State of North 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, Respondent owned and/or operated a construction site known as Mitchner Hills Subdivision ("Development") located at Camel and Copper Streets in Clayton, North 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 a 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.

7. 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.

8. The NCDENR Division of Land Resources, Land Quality Section, is responsible for the 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 Sediment Control Plan (“Plan”) prior to commencement of construction.

9. In July 2004, Respondent submitted a Plan to NCDENR for the Development seeking approval of the Plan and coverage under the NCDENR Permit. NCDENR issued its approval of the Plan in July 2004.

10. On December 8, 2008, Complainant perfected service of an Administrative Complaint, Docket No CWA-04-2008-4535, dated August 13, 2008, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), alleging that Respondent was in violation of Section 301 and 402(p) of the CWA, 33 U.S.C. § 1311 and 1342(p), due to its failure to comply with the NCDENR Permit.

III. Stipulations and Findings

11. For purposes of this Consent Agreement and Final Order (“CA/FO”), Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above and in the Administrative Complaint.

12. Respondent hereby waives its right to contest the allegations set out above and in the Administrative Complaint, and its right to appeal the Final Order accompanying this Consent Agreement.

13. 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.

14. By signing this CA/FO, 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. 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.

15. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the Administrative Complaint to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

16. Complainant and 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

17. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Fifteen Thousand Dollars (\$15,000) is an appropriate civil penalty to settle this action.

18. Respondent shall submit payment of the penalty specified in the preceding paragraph **in accordance with the schedule described in Paragraph 20 below** via cashier's or certified checks, payable to the order of "Treasurer, United States of America." The checks shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payments shall be tendered to:

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

19. At the time of payment, Respondent shall send a separate copy of the checks, and a written statement that payments have 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, GA 30303-8960

and

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

20. Respondent shall pay a civil penalty in the amount of \$ 15,000 as follows:

A. Within one (1) month of the effective date of this CAFO, Respondent shall pay \$ 1,875;

B. Within four (4) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus three (3) months' interest on \$ 13,125 calculated pursuant to 31 U.S.C. § 3717;

C. Within seven (7) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus six (6) months' interest on \$ 11,250 calculated pursuant to 31 U.S.C. § 3717;

D. Within ten (10) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus nine (9) months' interest on \$ 9,375 calculated pursuant to 31 U.S.C. § 3717;

E. Within thirteen (13) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus twelve (12) months' interest on \$ 7,500 calculated pursuant to 31 U.S.C. § 3717;

F. Within sixteen (16) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus fifteen (15) months' interest on \$ 5,625 calculated pursuant to 31 U.S.C. § 3717;

G. Within nineteen (19) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus eighteen (18) months' interest on \$ 3,750 calculated pursuant to 31 U.S.C. § 3717;

H. Within twenty-two (22) months of the effective date of this CAFO, Respondent shall pay \$ 1,875 plus twenty-one (21) months' interest on \$ 1,875 calculated pursuant to 31 U.S.C. § 3717;

21. For purposes of this CAFO, payments are due at the beginning of each month that a payment is due. One month equals thirty (30) or thirty-one (31) calendar days, with the exception of February which equals twenty-eight (28) calendar days.

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

23. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payments of the penalty assessed by this CA/FO in full by its due dates, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

24. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject 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

25. This CA/FO shall not relieve 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 EPA.

26. 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 Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

27. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO and in the Administrative Complaint. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein and in the Administrative Complaint. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO or in the Administrative

Complaint. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against 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.

28. 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.

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

30. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

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

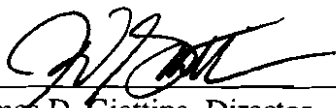
32. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

33. 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 COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 6/8/09

For RESPONDENT BBS BUILDERS & DEVELOPMENT COMPANY, LLC:

James V McLamb
NAME: James V McLamb
TITLE: President

Date: 6/2/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4


IN THE MATTER OF:)
)
BBS BUILDERS & DEVELOPMENT) CONSENT AGREEMENT AND
COMPANY, LLC) FINAL ORDER
)
RESPONDENT.) DOCKET NO. CWA-04-2008-4535
)
_____)

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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/9/09



A. Stanley Meiburg
Acting Regional Administrator

CERTIFICATE OF SERVICE

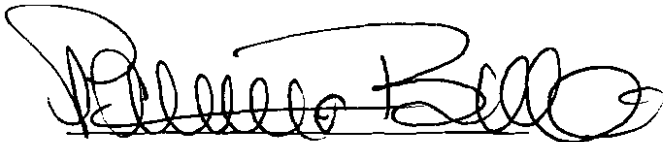
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **BBS Builders & Development Company, LLC**, Docket No. **CWA-04-2008-4535** filed with the Regional Hearing Clerk on 6-9, 2009, was served on 6-9, 2009, in the manner specified to each of the persons listed below.

By hand-delivery: Judy K. Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

By certified mail,
return receipt requested: Sherwood Lucas
1325 Pope Road
Dunn, NC 28334-5869

By Pouch Mail to: Hon. Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue
Washington, DC 20460-2001

Colleen Sullins
Director, Division of Water Quality
NC Department of Environment & Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox on 6/4/09
(Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: BBS Builders + Development - Mitchner Hills SD, NC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 15,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-208-4535

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

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
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
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 to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|