



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 19 2013

CERTIFIED MAIL 7004 1350 0003 0338 6171
RETURN RECEIPT REQUESTED

Mr. Dan Trawick, IV
Vice President
Trawick Contractors, Inc.
4740 Powell Avenue
Birmingham, Alabama 35222

Re: Consent Agreement and Final Order
Docket No. CWA-04-2013-4510(b)
New Oxmoor K-8 School
Birmingham, Alabama

Dear Mr. Trawick:

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 that you have met all of the provisions under this Final Order. We acknowledge receipt of full payment in the amount of \$10,772.

Should you have any questions or concerns regarding this matter, please contact Mr. Namon Mathews at (404) 562-9777 or via email at mathews.namon@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

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

Enclosure

cc: Alabama Department of Environmental Management
Birmingham Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Trawick Contractors, Inc.
New Oxmoor K-8 School
Birmingham, Alabama

RESPONDENT

)
) CONSENT AGREEMENT AND
) FINAL ORDER

)
)
)
)
)
) DOCKET NO. CWA-04-2013-4510(b)

HEARING CLERK

2013 NOV 19 AM 9:16

RECEIVED
EPA REGION IV

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 of the EPA, Region 4, 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. Trawick Contractors, Inc. ("Respondent"), is a corporation duly organized and existing under the laws of the State of Alabama and is therefore 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 operated a construction site at the New Oxmoor K-8 School ("Facility"), which is located at 3600 Sydney Drive, Birmingham, Alabama.

5. 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(a).

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES permit program authorizing the EPA or the 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 of the United States subject to specific terms and conditions. The EPA has granted the State of Alabama, through the Alabama Department of Environmental Management (“ADEM”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. ADEM issued the *National Pollutant Discharge Elimination System Permit General Permit*, Permit No. ALR107555, (“Permit”) in accordance with the Alabama Water Pollution Control Act of 1975 (Code of Alabama 22-22-1 *et seq.*, 1975). The Permit became effective on November 17, 2011, and will expire on March 31, 2016.

8. ADEM is responsible for the issuance, compliance and enforcement of the Alabama Water Pollution Control Act of 1975 (Code of Alabama 22-22-1 *et seq.*, 1975), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting coverage.

9. On August 18, 2011, Respondent submitted an NOI to ADEM requesting coverage under the Permit at its Facility. The authorization became effective on November 17, 2011, and will expire on March 31, 2016, and requires Respondent to comply with all provisions of the Permit.

10. On August 14, 2012, the EPA and ADEM performed an inspection of Respondent’s Facility to evaluate the treatment and disposal of storm water in accordance with the CWA and the Permit.

11. Based on the inspection and review of additional information, the EPA has determined the Respondent has failed to comply with the Permit as follows:

- a. Implementation of the approved Construction Best Management Practices Plan (CBMPP) was inadequate. Measures to prevent, minimize, and/or remediate the accumulation of offsite sediment, to the maximum extent practicable, were not taken as required by Part III.A, Part III.H.3 and Part I.C.9 of the Permit. Sediment was observed, accumulated offsite below the detention basin outfall and in Little Shades Creek, which caused a substantial contrast with the natural appearance of the receiving stream. Sediment had also topped the retaining wall, breached perimeter silt fencing on the north perimeter and deposited into an unnamed tributary of Little Shades Creek.
- b. The stormwater control system did not properly control stormwater or minimize offsite accumulation of sediment to the maximum extent practicable and the designed controls, practices, devices and measures specified in the approved CBMPP were either missing, improperly installed and/or irregularly maintained violating Part III.A.1-10, Part III.B, Part III.D.2 and Part IV.D of the Permit.

- i. Stormwater volume and velocity controls were inadequate. Rip-rap protection at an outlet north of the construction trailer had been displaced and/or was not properly installed as per the CBMPP. Additionally, an adjacent rip-rap check dam was improperly installed and in need of maintenance. Rip-rap velocity protection was missing at the detention basin's eastern intake inlet and outfall structures.
 - ii. Controls and techniques designed to minimize exposed soil and slope erosion during construction were inadequate. Stabilization was needed for the detention basin's outfall slopes, for the slopes on the northeastern portion of development and for the soil stockpiles on the northeastern portion of the development. Stabilization was also needed for the slope on the southern portion of the development and for the slope behind the block/brick staging area.
 - iii. The construction entrance/exit protection was inadequate and did not minimize off-site tracking of sediment into the street as required by the Permit. Documented in ADEM's August 14, 2012, compliance inspection report and noted during the site investigation aspect of the joint inspection with the EPA, sediment from the site had been tracked into the street as a consequence of the rip-rap construction entrance pad that had not been properly maintained.
 - iv. Storm drain inlet protection was inadequate and did not minimize sediment discharges from the site. Protection was missing at a drop inlet and three (3) additional drop inlets were in need of maintenance. Protection was missing at a curb inlet and three (3) additional curb inlets were in need of maintenance. The protection at the outlet north of the construction trailer had been displaced and/or was not properly installed as per the CBMPP.
 - v. Perimeter controls were inadequate: silt fencing was missing downfield of the detention basin's outfall and the second row of silt fencing along the north and northwestern perimeter were also missing. Additionally, an entire stretch of silt fencing at the base of the slope on the northeastern portion of the development has been buried allowing sheet flow to freely discharge from this area unprotected.
- c. Pollution prevention measures were inadequate in violation of Part III.C.(1) and III.C.(2) of the Permit. Construction building materials were being stored on the ground without adequate protection and construction waste was not properly disposed of.

- d. The stormwater management inspection, maintenance and records program was inadequate. Documentation and evidence of all required daily observations, weekly inspections, corrective actions and CBMPP updates were not available as required by Part III.G.1.(a) and (b), Part III.G.2.(a)-(g), Part III.G.3.(a)-(d), Part III.D.4, Part III.H and Part IV.J of the permit.
- i. There were no daily logs available of daily observations performed.
 - ii. Records were not provided as evidence of comprehensive site inspections; inspections conducted within twenty-four (24) hours of a qualifying precipitation event; reports of adequate content and written format; identification of poorly functioning controls and non-compliant discharges; and the triggered corrective activity resulting from noted deficiencies. Additionally, weekly site inspections were not available for the months of November 2011, December 2011, and February 2012.
 - iii. The CBMPP site map was not modified or updated to current conditions. There were several measures that were in place on the site that were not identified on the site map and there were some measures that were identified but had not been installed or had been removed, such as the soil stockpile in the football field; slope on southern portion of development; steep slope behind block/brick staging area; check dam; and rock berm downfield of outlet north of construction trailer.
 - iv. The facility was not documenting corrective actions being taken. The CBMPP requires that a log of corrective actions be maintained; however, no such log was available for review during the inspection. Despite the lack of corrective action documentation, it was clear from the observations made during the inspection that corrective actions were not being taken within the 5-day requirement. For example, the ADEM inspection conducted on January 20, 2012, found many of the same issues that were still present at the site such as inlet protection not maintained; soil stockpile not stabilized; sediment accumulation in the detention basin; and accumulation of sediment offsite and in waters downstream of the discharge outlet at the facility.

12. Based on a review of additional information, the EPA has determined that the Respondent failed to obtain a storm water permit prior to commencing construction.

13. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to obtain a storm water permit prior to commencing construction and by failing to comply with the Permit.

III. Stipulations and Findings

14. 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.

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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 ten thousand seven hundred and seventy two dollars (\$10,772) is an appropriate civil penalty to settle this action.

22. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (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

23. 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
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
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

25. 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

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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.

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

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

For Complainant:

Mr. Matthew Hicks
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9670

For Respondent:

Mr. John Flynn
Weinberg Wheeler Hudgins Gunn & Dial
3344 Peachtree Road NE
Suite 2400
Atlanta, Georgia 30326
(404) 832-9516

34. 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.

35. 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 Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

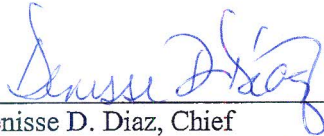
36. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

37. 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, REGION 4:



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

Date: 4/12/13

For RESPONDENT, TRAWICK CONTRACTORS, INC.:



Dan Trawick, IV, Vice President
Trawick Contractors, Inc.

Date: 8-14-13

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**


IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
Trawick Contractors, Inc.)	FINAL ORDER
New Oxmoor K-8 School)	
Birmingham, Alabama)	
)	
RESPONDENT)	DOCKET NO. CWA-04-2013-4510(b)
<hr/>)	

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: Nov. 14, 2013



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

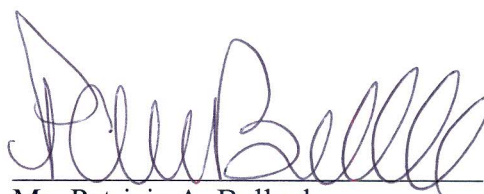
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Trawick Contractors, Inc., **Docket No. CWA-04-2013-4510(b)** (filed with the Regional Hearing Clerk on 11-19, 2013) was served on 11-19, 2013, in the manner specified to each of the persons listed below.

By hand-delivery: Matthew Hicks
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: John Flynn
Weinberg Wheeler Hudgins Gunn & Dial
3344 Peachtree Road NE
Suite 2400
Atlanta, Georgia 30326
(404) 832-9516

Mr. Jeff Kitchens
Chief, Stormwater Management Branch
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Date: 11-19-13



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
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 11/7/13
[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: Trawick Contractors, Inc. - New Oxmoor K-8 School, AL
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 10,772
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-4510b)

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
Environmental Enforcement Section
Department of Justice/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044
2. Originating Office (ORC)
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
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel

Total Amount Due: \$ 10,772

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

 Installment payments to be paid:

Amount Due:

Date Due:

\$ _____

\$ _____

\$ _____

\$ _____
