



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 24 2013

CERTIFIED MAIL 7012 1010 0001 8097 1686  
RETURN RECEIPT REQUESTED

Mr. Anthony Cantrell  
President  
Willcan, Inc.  
P.O. Box 1357  
Calhoun, Georgia 30703

Re: Basic Ready Mix  
Consent Agreement and Final Order No.: CWA-04-2013-4515(b) Adairsville  
Consent Agreement and Final Order No.: CWA-04-2013-4516(b) Calhoun  
Consent Agreement and Final Order No.: CWA-04-2013-4517(b) Cedartown  
Consent Agreement and Final Order No.: CWA-04-2013-4518(b) Chickamauga  
Consent Agreement and Final Order No.: CWA-04-2013-4519(b) Dalton  
Consent Agreement and Final Order No.: CWA-04-2013-4520(b) Rome

Dear Mr. Cantrell:

Enclosed please find a fully executed copy of the Consent Agreement and Final Orders finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns, please contact Mr. Michael Hom at (404) 562-9748 or via email at [hom.michael@epa.gov](mailto:hom.michael@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Mary D. Diaz for".

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

Enclosures

cc: Mr. James A. Capp  
Georgia Environmental Protection Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Willcan, Inc.  
Basic Ready Mix  
Rome, Georgia

RESPONDENT

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)  
) **CONSENT AGREEMENT AND  
FINAL ORDER**

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) **DOCKET NO. CWA-04-2013-~~520~~**

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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 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. Willcan, Inc. (“Respondent”), is a corporation duly organized and existing under the laws of the State of Georgia 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 owned and/or operated a ready mix concrete facility (“Facility”), which is located at 33 Riverside Industrial Park NE, Rome, Georgia, 30161.

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 Georgia, through the Georgia Environmental Protection Division (“GEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The GEPD issued the *Georgia Storm Water Discharges Associated with Industrial Activity*, Permit No. GAR050000, (“Permit”) in accordance with the Georgia Water Quality Control Act of 1964 (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964). The Permit became effective on June 1, 2012, and will expire on May 31, 2017.

8. The GEPD is responsible for the issuance, compliance and enforcement of the Georgia Water Quality Control Act of 1964 (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting coverage.

9. On June 28, 2012, Respondent submitted an NOI to GEPD to acquire authorization to discharge under the Permit. Respondent must comply with the Permit, including applicable Sector E requirements. Sector E (Part 8.E of the Permit) contains requirements for storm water discharges associated with industrial activity from glass, clay, cement, concrete, and gypsum product manufacturing facilities.

10. Part 5 of the Permit requires the Respondent to “...review and update their storm water pollution prevention plan (“SWPPP”) for each covered facility within ninety (90) days and implement all provisions of the Permit within one hundred and eight (180) days of the effective date of the Permit.” The SWPPP is intended to document the selection, design, and installation of control measures.

11. Part 5.1 of the Permit requires the contents of the SWPPP to contain: storm water pollution prevention team (Part 5.1.1); site description (Part 5.1.2); summary of potential pollutant sources (Part 5.1.3); description of control measures (Part 5.1.4); schedules and procedures (Part 5.1.5); and signature requirements (Appendix B.7).

12. Part 5.1.1.2 of the Permit requires the Respondent to conduct employee training programs in accordance with the SWPPP.

13. Part 4.1 of the Permit requires the Respondent to “...conduct routine facility inspections of all areas of the Facility where industrial materials or activities are exposed to storm water, and of all storm water control measures used to comply with the effluent limits contained in this

Permit. Routine facility inspections must be conducted at least quarterly (i.e., once each calendar quarter).”

14. Part 4.2 of the Permit requires the Respondent to “...once each quarter for the entire permit term, permittees must collect a storm water sample from each outfall (except as noted in Part 4.2.3) and conduct a visual assessment of each of these samples. These samples are not required to be collected consistent with 40 CFR Part 136 procedures but should be collected in such a manner that the samples are representative of the storm water discharge. The sampling required must occur during a site’s normal operating hours.”

15. Part 4.3 of the Permit requires the Respondent to “...conduct annual comprehensive site inspections while covered under this permit. Annual, as defined in this Part, means once during each of the following inspection periods beginning with the period the permittee is authorized to discharge under this permit:

- a. Year 1: Permit effective date – December 31, 2012
- b. Year 2: January 1, 2013 – December 31, 2013
- c. Year 3: January 1, 2014 – December 31, 2014
- d. Year 4: January 1, 2015 – December 31, 2015
- e. Year 5: January 1, 2016 – Permit expiration date (unless the permit is extended to or past December 31, 2016, in which case, December 31, 2016.)

16. Part 4.3.1.1.g of the Permit requires the Respondent to certify “...that all discharge points have been visually tested or evaluated at least once each year for the presence of non-storm water discharges other than the allowable non-storm water discharges currently identified under Part 1.1.3 of this permit.”

17. Part 6.2 of the Permit requires the Respondent to conduct monitoring “...in accordance with the procedures described in Appendix B.14. This permit includes the following types of required analytical monitoring, one or more of which may apply to the permittee’s discharge:

- a. Annual benchmark monitoring (see Part 6.2.1);
- b. Annual effluent limitation monitoring (see Part 6.2.2);
- c. Monitoring of discharges to an impaired stream segment (see Appendix C); and
- d. Other monitoring as required by EPD (see Part 6.2.4).”

18. Part 7.2 of the Permit requires the Respondent to submit annual reports “...per the

following schedule:

- a. January 31, 2013, from the date of your last annual report and all of calendar year 2012.
- b. January 31, 2014, for calendar year 2013.
- c. January 31, 2015, for calendar year 2014.
- d. January 31, 2016, for calendar year 2015.
- e. January 31, 2017, for calendar year 2016.”

19. Part 8.E.2 of the Permit subjects the Respondent to additional technology based effluent limits, “...(w)ith good housekeeping, prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Consider sweeping regularly or using other equivalent measures to minimize the presence of these materials. Indicate in the SWPPP the frequency of sweeping or equivalent measures. Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed.”

20. Part 8.E.3.2 of the Permit requires the Respondent to certify “...(f)or facilities producing ready-mix concrete, concrete block, brick, or similar products, include in the non-storm water discharge certification a description of measures that ensure that process waste waters resulting from washing trucks, mixers, transport buckets, forms, or other equipment are discharged in accordance with NPDES requirements or are recycled.”

21. On July 19, 2013, pursuant to Section 308 of the CWA, the EPA sent an information request to the Respondent to evaluate the Facility’s treatment and disposal of storm water in accordance with the CWA and the Permit.

22. Based on the review of the Section 308 information submitted by the Respondent on July 25, 2013, the EPA has determined the Respondent has failed to comply with the Permit as follows:

- a. Sign, date and certify the SWPPP in accordance with Part 5.1.6 and Appendix B.7 of the Permit;
- b. Update and keep current the SWPPP in accordance with Part 5 of the Permit;
- c. Train employees in the conditions of the Permit in accordance with Part 5.1.1.2 of the Permit;

- d. Conduct and maintain records of quarterly routine facility inspections from the effective date of the Permit to the present, in accordance with Part 4.1 of the Permit;
- e. Conduct and maintain records of quarterly visual assessments from the effective date of the Permit to the present, in accordance with Part 4.2 of the Permit;
- f. Conduct and maintain records of the annual comprehensive site inspection from the effective date of the Permit to the present, in accordance with Part 4.3 of the Permit;
- g. Certify the non-storm water evaluation, in accordance with Part 4.3.1.1.g of the Permit.
- h. Conduct benchmark monitoring and maintain records from the effective date of the Permit to the present, in accordance with Part 6 and Appendix C of the Permit;
- i. Submit the annual report in accordance with Part 7.2 of the Permit;
- j. Conduct additional sector requirements associated with Sector E as outlined in Part 8.E of the Permit.

23. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit.

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

24. 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.

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

26. 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.

27. 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.

28. 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.

29. 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.

30. 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**

31. 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 four thousand five hundred dollars (\$4,500) is an appropriate civil penalty to settle this action.

32. 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

33. 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

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

35. 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**

36. 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.

37. 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.

38. 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.



39. 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.

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

41. 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.

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

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

For Complainant:

Ms. Michele Wetherington  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9613

For Respondent:

Mr. Anthony Cantrell  
President  
Willcan, Inc.  
P.O. Box 1357  
Calhoun, Georgia 30703  
(706) 629-0815

44. 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.

45. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.


46. 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 90 days after the date such notice is sent by the EPA.

**VI. Effective Date**

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

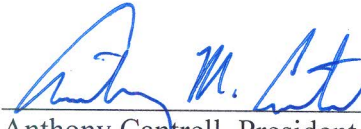
**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

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

Date: 9/24/2013

**For RESPONDENT, WILLCAN, INC.:**

  
Anthony Cantrell, President  
Willcan, Inc.

Date: 8/6/13

**REGION 4**

**IN THE MATTER OF:**

**Willcan, Inc.  
Basic Ready Mix  
Rome, Georgia**

**RESPONDENT**

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)  
) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**  
)  
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)  
) **DOCKET NO. CWA-04-2013-4520(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: Sept. 24, 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 Willcan, Inc., **Docket No. CWA-04-2013-4520(b)** (filed with the Regional Hearing Clerk on **SEP 24 2013**, 2013) was served on **SEP 24 2013**, 2013, in the manner specified to each of the persons listed below.

By hand-delivery:

Ms. Michele Wetherington  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

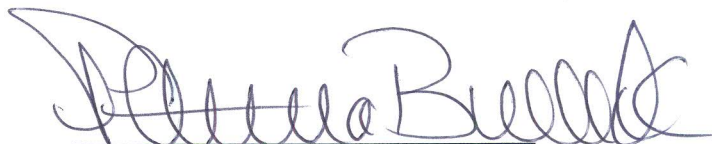
By certified mail,  
return receipt requested:

Mr. Anthony Cantrell  
President  
Willcan, Inc.  
P.O. Box 1357  
Calhoun, Georgia 30703

Mr. James A. Capp, Branch Chief  
Watershed Protection Branch  
Georgia Environmental Protection Division  
420 International Parkway  
Suite 101  
Atlanta, Georgia 30354

Date:

9-24-13



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