



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 07 2013

CERTIFIED MAIL 7012 1010 0001 8097 1594
RETURN RECEIPT REQUESTED

Mr. William T. Delay
President
Sherman-Dixie Concrete Industries, Inc.
c/o Gary C. Rikard, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
P.O. Box 171443
Memphis, Tennessee 38187-1443

Re: Consent Agreement and Final Order No.: CWA-04-2013-4521(b)
Sherman-Dixie Concrete Industries, Inc.
Hermitage, Tennessee

Dear Mr. Delay:

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 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.

Sincerely,

A handwritten signature in cursive script that reads "Denisse D. Diaz".

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

Enclosure

cc: Dr. Sandra K. Dudley, Ph.D., P.E.
Tennessee Department of Environment and Conservation

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

**Sherman-Dixie Concrete
Industries, Inc.
Hermitage, Tennessee**

RESPONDENT

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
)
) **DOCKET NO. CWA-04-2013-4521(6)**

HEARING CLERK

2013 NOV - 7 PM 3:12

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. Sherman-Dixie Concrete Industries, Inc. ("Respondent"), is a corporation duly organized and existing under the laws of the State of Tennessee 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 concrete products manufacturing facility ("Facility"), which is located at 3641 Central Pike Avenue in Hermitage, Tennessee.

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 Tennessee, through the Tennessee Department of Environment and Conservation (“TDEC”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The TDEC issued the *Tennessee Storm Water Multi-Sector General Permit for Industrial Activities*, Permit No. TNR05000, (“Permit”) in accordance with the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*). The Permit became effective on June 1, 2009, and will expire on May 14, 2014.

8. The TDEC is responsible for the issuance, compliance and enforcement of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq.*), and the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting coverage.

9. On June 3, 2009, Respondent submitted an NOI to TDEC requesting coverage under the Permit at its Facility. The TDEC authorized discharges under the Permit, Tracking No. TNR053492. The authorization became effective on June 12, 2009, and will expire on May 14, 2014, and requires Respondent to comply with the Permit, including applicable Sector E requirements. Sector E (Part 11.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. Section 4 of the Permit requires the Permittee to develop a storm water pollution prevention plan (“SWPPP”) for each covered facility. The SWPPP shall describe and ensure the implementation of practices to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of the Permit.

11. Section 4.4 of the Permit requires the contents of the SWPPP to comply with the requirements listed in the appropriate sector of Part 11 of the Permit, in this case Part 11.E.3.

12. Section 11.E.3.2.3.1 of the Permit requires the Permittee to maintain good housekeeping of areas that may contribute pollutants to storm water discharges.

13. Section 11.E.3.2.3.2 of the Permit requires the Permittee to ensure appropriate maintenance of storm water management devices and systems.

14. Section 11.E.3.2.3.4 of the Permit requires qualified facility personnel to inspect designated equipment and areas at a minimum of once per month while the facility is in operation, and maintain records of the inspections.
15. Section 11.E.3.2.3.5 of the Permit requires the Permittee to conduct employee training programs on an annual basis in accordance with the SWPPP.
16. Section 11.E.3.2.3.7.1 of the Permit requires the Permittee to certify annually that the discharge has been tested or evaluated for the presence of non-storm water discharges.
17. Section 11.E.3.2.4 of the Permit requires the Permittee to conduct comprehensive site compliance evaluations at least once a year.
18. Section 11.E.5.2 of the Permit requires the Permittee to submit to TDEC monitoring results for each outfall associated with industrial activity no later than March 31 of each calendar year.
19. Section 11.E.5.3 of the Permit requires the Permittee to perform and document a quarterly visual examination of storm water discharges associated with industrial activity from each outfall.
20. On October 20, 2011, the EPA and TDEC performed an inspection of Respondent's Facility to evaluate the treatment and disposal of storm water in accordance with the CWA and the Permit.
21. The EPA determined that the Facility discharged storm water associated with an industrial activity within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations, into an unnamed tributary to Stoners Creek, a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
22. During the inspection, the EPA observed the following:
 - a. The equipment washing area and the unknown chemical tanks area contained material and debris on the ground which may contribute pollutants to storm water discharges, in violation of Section 11.E.3.2.3.1 of the Permit;
 - b. The sediment retention barrier was covered with vegetation and sediment, and needed maintenance as required by Section 11.E.3.2.3.2 of the Permit;
 - c. There were no records of inspections of designated equipment and areas at a minimum of once per month while the Facility was in operation, as required by Section 11.E.3.2.3.4 of the Permit;

- d. There were no records of annual employee training programs for 2009 and 2010, as required by Section 11.E.3.2.3.5 of the Permit;
 - e. There were no annual non-storm water discharge certifications for 2009 and 2010, as required by Section 11.E.3.2.3.7.1 of the Permit;
 - f. There were no records of annual comprehensive site compliance evaluations for 2009 and 2010, as required by Section 11.E.3.2.4 of the Permit;
 - g. There were no records of monitoring results for each outfall associated with industrial activity for 2009 and 2010, as required by Section 11.E.5.2 of the Permit;
 - h. There were no records of quarterly visual examinations of storm water discharges associated with industrial activity from each outfall since June 2009, as required by Section 11.E.5.3 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 twenty eight thousand dollars (\$28,000) 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:

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

For Respondent:

Mr. William T. Delay
President
Sherman-Dixie Concrete Industries, Inc.
200 42nd Avenue North
Nashville, Tennessee 37209
(615) 889-0700

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.

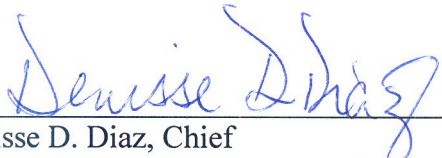
45. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

46. 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:

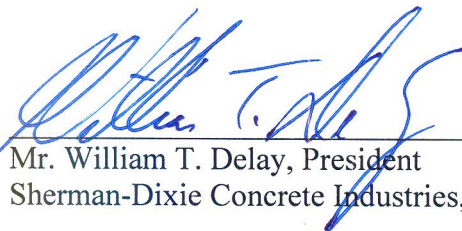
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:



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

Date: 11/7/13

For RESPONDENT, SHERMAN-DIXIE CONCRETE INDUSTRIES, INC.:



Mr. William T. Delay, President
Sherman-Dixie Concrete Industries, Inc.

Date: 9/4/13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Sherman-Dixie Concrete) CONSENT AGREEMENT AND
Industries, Inc.) FINAL ORDER
Hermitage, Tennessee)
)
RESPONDENT) DOCKET NO. CWA-04-2013-4521(b)
_____)

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. 7, 2013

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

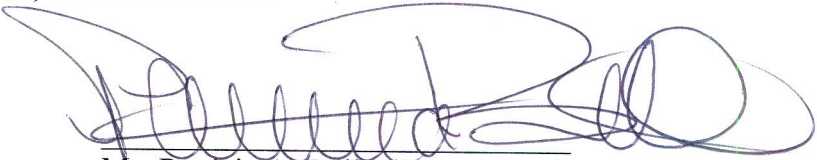
The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Sherman-Dixie Concrete Industries, Inc., **Docket No. CWA-04-2013-4521(b)** (filed with the Regional Hearing Clerk on 11-7, 2013 was served on 11-7, 2013, in the manner specified to each of the persons listed below.

By hand-delivery: Mr. Wayne Lee
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: Mr. William T. Delay
President
Sherman-Dixie Concrete Industries, Inc.
200 42nd Avenue North
Nashville, Tennessee 37209

Dr. Sandra K. Dudley, Ph.D., P.E., Director
Division of Water Resources
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

Date: 11-7-13



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 9/17/13
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree.
USAO COLLECTS. | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement.
FMS COLLECTS PAYMENT. |
| <input type="checkbox"/> SF Judicial Order/Consent Decree.
FMS COLLECTS. | <input type="checkbox"/> Other Receivables |
| <input type="checkbox"/> This is an original debt. | <input type="checkbox"/> This is a modification. |

PAYEE: Sherman-Dixie Concrete Industries, Inc., Hermitage, TN
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 28,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-4521(b)

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
3. Regional Hearing Clerk | 2. Designated Program Office
4. Regional Counsel |
|--|---|

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2013-4521(b)

Total Amount Due: \$ 28,000

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

Installment payments to be paid:

Amount Due:

Date Due:

\$ _____

\$ _____

\$ _____

\$ _____
