

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
)  
) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**  
CULPEPER WOOD PRESERVERS, INC. )  
COLUMBIA, SOUTH CAROLINA )  
)  
RESPONDENT. ) **DOCKET NO. CWA-04-2007-4512(b)**

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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 ("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, EPA, Region 4, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch, EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Culpeper Wood Preservers, Inc. ("Respondent"), was a corporation duly organized and existing under the laws of the State of South Carolina and, 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 facility located at 208 Flintlock Road, Columbia, South Carolina, operating under National Pollutant Discharge Elimination System ("NPDES") Permit No. SCR000000. The facility discharges stormwater into Cumbess Creek, a "navigable water" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

5. The CWA was enacted "to restore and maintain the chemical, physical and biological integrity of the Nation's water." 33 U.S.C. §§ 1251-1386. To accomplish this

objective, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants into waters of the United States by a person except in compliance with certain other enumerated sections of the CWA, including Section 402.

6. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), establishes a system for the issuance of NPDES permits by EPA to point sources for discharges of pollutants to waters of the United States. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), permits each state to implement the CWA through its own permit program, so long as the program conforms to federal guidelines approved by the EPA Administrator. The EPA Administrator has authorized the State of South Carolina through the South Carolina Department of Health and Environmental Control ("SCDHEC") to issue and enforce stormwater discharge permits.

7. The SCDHEC issued an *NPDES General Permit for Storm Water Discharges Associated With Industrial Activity (except construction activity)*, Permit No. SCR000000 ("Permit") in accordance with the South Carolina Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and the provisions of the CWA. The Permit became effective July 1, 2005, and shall expire August 31, 2008. Coverage under this permit is obtained by submitting a Notice of Intent ("NOI") as required in Part 2 of the Permit or by submitting an annual invoice to SCDHEC for continued coverage.

8. On January 29, 2003, Respondent submitted an NOI to the SCDHEC requesting coverage under the Permit. In response to the NOI, a Notice of Coverage was sent to Respondent. Respondent, maintained coverage under the Permit by submitting subsequent annual invoices to SCDHEC.

9. On August 31, 2005, representatives of Science Applications International Corporation, a contractor to EPA, in conjunction with the SCDHEC performed a Compliance Storm Water Evaluation Inspection ("CSWEI") of Respondent's facility located at 208 Flintlock Road, Columbia, South Carolina. EPA's CSWEI is designed to evaluate the treatment and disposal of stormwater at the facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 126.26 and the SCDHEC Permit.

10. As a result of the CSWEI, EPA, Region 4 has determined that the Respondent discharged stormwater associated with industrial activity within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

11. The CSWEI revealed that Respondent violated Part 3.3 of the Permit which requires amendment to the Storm Water Pollution Prevention Plan ("SWPPP") whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to waters, or if the SWPPP proves to be ineffective in eliminating or adequately minimizing pollutants, or otherwise responsible for failing to meet the requirements of the Permit.

12. The CSWEI revealed that Respondent violated Part 3.4.A. of the Permit which requires the identification of a specific individual or individuals as members of a Storm Water Pollution Prevention Team that are responsible for developing the SWPPP and assisting in its implementation, maintenance, and revision.

13. The CSWEI revealed that Respondent violated Part 3.4.B.1.(a) of the Permit which requires the SWPPP to include a site map indicating an outline of the portions of the drainage area of each stormwater outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in stormwater runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under paragraph 3 (Spills and Leaks) of the Permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage, or disposal of wastes, liquid-storage tanks, processing areas and storage areas.

14. The CSWEI revealed that Respondent violated Part 3.4.B.1.(b) of the Permit which requires the SWPPP to include a site map indicating each area of the facility that generates industrial stormwater discharges with a reasonable potential for containing significant amounts of pollutants and a prediction of the direction of flow and an identification of the types of pollutants which are likely to be present in industrial stormwater discharges. Factors to consider include the toxicity of chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall also be identified.

15. The CSWEI revealed that Respondent violated Part 3.4.B.3 of the Permit which requires the SWPPP to include a list of significant spills and significant leaks of toxic or hazardous pollutant that occurred at areas that are exposed to precipitation or that otherwise drain to a stormwater conveyance at the facility within three (3) years prior to the effective date of this permit.

16. The CSWEI revealed that Respondent violated Part 3.4.B.4 of the Permit which requires the SWPPP to include a summary of existing discharge sampling data describing pollutants in stormwater discharges from the facility, including a summary of sampling data collected during the term of this permit.

17. The CSWEI revealed that Respondent violated Part 3.4.B.5 of the Permit which requires the SWPPP to include a narrative description of the potential pollutant sources at the following areas: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust- or particulate-generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site, for each potential source, any pollutant or pollutant parameters of concern shall be identified.

18. The CSWEI revealed that Respondent violated Part 3.4.C.4 of the Permit which requires the identification of qualified facility personnel to inspect designated equipment and areas of the facility at appropriate intervals. Respondent also violated the Permit requirement to develop and implement a set of tracking or follow-up procedures to be used to ensure that appropriate actions are taken in response to the inspections and the maintenance of all inspection records.

19. The CSWEI revealed that Respondent violated Part 3.4.C.5 of the Permit which requires the development and implementation of employee training programs to inform personnel responsible for implementing activities identified in the SWPPP, or otherwise responsible for stormwater management at all levels of responsibility of the components and goals of the SWPPP.

20. The CSWEI revealed that Respondent violated Part 3.4.C.6 of the Permit which requires the development, implementation and maintenance of record keeping and internal reporting procedures which describe incidents such as spills, or other discharges, along with other information describing the quality and quantity of stormwater discharges.

21. The CSWEI revealed that Respondent violated Part 3.4.C.7 of the Permit which requires the certification that the discharge has been tested or evaluated for the presence of non-stormwater discharges.

22. The CSWEI revealed that Respondent violated Part 3.4.D of the Permit which requires qualified personnel to conduct evaluations of site compliance at appropriate intervals, but no less than once a year.

23. Therefore, Respondent has violated a permit condition or limitation implementing any such sections in a permit issued by a State under Section 402(b) of the CWA, 33 U.S.C. § 1342(b) by failing to comply with the SCDHEC Permit.

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

24. Complainant and 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, Respondent admits the jurisdictional allegations set out above and admits nor denies the factual allegations set out above.

26. 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. 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, 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.

29. 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 Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

30. 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**

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, EPA has determined that Two Thousand Five Hundred Dollars (\$2,500) is an appropriate civil penalty to settle this action.

32. 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 Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Cincinnati Operations Accounting  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099

33. At the time of payment, 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, GA 30303-8960

and

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

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

35. Pursuant to 40 C.F.R. Parts 13 and 31 U.S.C. § 3717 *et seq.*, if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, 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.

36. 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), attorneys 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**

37. 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.

38. 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.

39. 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. 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 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 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.

40. 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.

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

42. 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.

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

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

For Complainant:

William T. Jones  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9582

For Respondent:

Mr. David Anderson  
Plant Manager  
Culpeper Wood Preservers, Inc.  
208 Flintlake Road  
Columbia, SC 29223  
(803) 788-5033

45. 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.

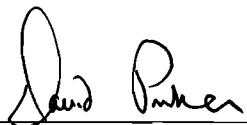
46. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of South Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

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

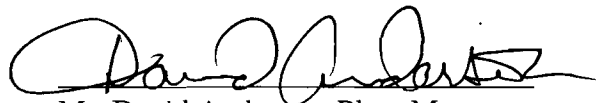
**AGREED AND CONSENTED TO:**

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

*for*   
\_\_\_\_\_  
Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency, Region 4

Date: 3/19/07

For RESPONDENT, CULPEPER WOOD PRESERVERS, INC.:

  
\_\_\_\_\_  
Mr. David Anderson, Plant Manager

Date: 3/9/07



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

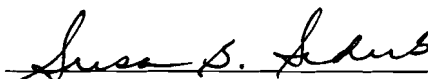
IN THE MATTER OF: )  
 )  
CULPEPER WOOD PRESERVERS, INC. ) CONSENT AGREEMENT AND  
COLUMBIA, SOUTH CAROLINA ) FINAL ORDER  
 )  
 )  
RESPONDENT. ) DOCKET NO. CWA-04-2007-4512(b)  
\_\_\_\_\_ )

**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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 3, 2007

  
\_\_\_\_\_  
Susan B. Schub  
Regional Judicial Officer

**AGREEMENT AND FINAL ORDER** in the matter of **Culpeper Wood Preservers, Inc.**,

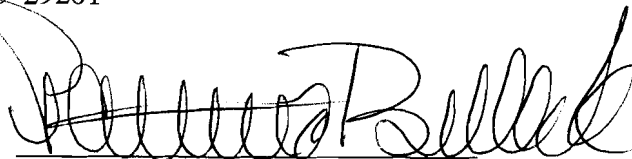
Docket No. CWA-04-2007-4512(b) (filed with the Regional Hearing Clerk on MAY 04 2007, 2007) was served on MAY 04 2007, 2007, in the manner specified to each of the persons listed below.

By hand-delivery: William T. Jones  
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: Mr. David Anderson  
Plant Manager  
Culpeper Wood Preservers, Inc.  
208 Flintlake Road  
Columbia, SC 29223

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

Date: 5-4-07



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 3/15/07  
(Name) (Date)

in the WMD/WPEB/GES 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: Culpeper Wood Receivables, Inc, Columbia, SC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2,570  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-207-4512/6

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: WMD

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

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