



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

OCT 07 2010

CERTIFIED MAIL 70060810000411310257
RETURN RECEIPT REQUESTED

Mr. Dick Buchanan
President
Buchanan Lumber Mobile, Inc.
P.O. Box 2105
Mobile, Alabama 36601

Re: Consent Agreement and Final Order
Docket No. CWA-04-2001-4527(b)

Dear Mr. Buchanan:

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

Should you have any questions or problems, please contact Ms. Stacey Bouma at (404) 562-9392.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata", with a horizontal line extending to the right.

César A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Alabama Department of Environmental
Management

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2010 OCT -6 PM 4:29
RECEIVED
EPA REGION 4
MOBILE ALABAMA

IN THE MATTER OF:)
)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**

BUCHANAN LUMBER MOBILE, INC.)
MOBILE, ALABAMA)
)

RESPONDENT) **DOCKET NO. CWA-04-2010-4527(b)**

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

II. Allegations

3. At all times relevant to this action, Buchanan Lumber Mobile, Inc. ("Respondent"), was a corporation duly organized and existing under the laws of the State of Alabama 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 known as Buchanan Lumber Mobile, Inc., ("Facility") located at 104 Industrial Canal Road East, in Mobile, Alabama.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of

pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. Pursuant to Section 402(b) of the CWA, EPA has granted the State of Alabama, through the Department of Environmental Management (“ADEM”), approval to administer the NPDES program.

7. ADEM issued Administrative Code Chapter 335-6-12, *National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Associated with Lumber, Wood, and Paper Products Industry, etc., Permit Number ALG060000*, (“Permit”), in accordance with Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 and 22-22A-16 *et seq.*, as amended, effective July 1, 2007. Regulated facilities must submit a Notice of Intent (“NOI”) requesting coverage under the Permit to ADEM.

8. The ADEM Water Division is responsible for the approval of coverage under the Permit, upon submission of the NOI.

9. On July 3, 2007, Respondent submitted to ADEM an NOI requesting coverage for its Facility. ADEM granted coverage to Respondent on August 22, 2007, under General Permit Number ALG060109, with an effective date of September 1, 2007, and an expiration date of June 30, 2012.

10. Part 1.A.DSN011.3 of the Permit specifies information that shall be included in an inspection log.

11. Part I.B.4.a of the Permit requires the Permittee to retain records of all monitoring information, copies of all reports required by the Permit, and records of all data used to complete the above reports or the application for the Permit, for a period of at least three (3) years from the date of the sample measurement, report or application.

12. Part I.B.4.b of the Permit requires all records required to be kept for a period of three (3) years to be kept at the permitted Facility or an alternate location approved by ADEM in writing and to be available for inspection. A complete copy of the Permit should be maintained at the Facility.

13. Part I.C.1.a of the Permit requires the Permittee to conduct required monitoring in accordance with the schedule stated in the Permit and to summarize monitoring results on a Discharge Monitoring Report (“DMR”) Form.

14. Part I.C.1.b of the Permit requires the Permittee to submit DMRs to ADEM on a semiannual basis so that they are received no later than the 28th day of July and the 28th day of January.

15. Part II.B.2.b of the Permit requires the Permittee to prepare, implement, and maintain a Spill Prevention, Control and Countermeasures (“SPCC”) Plan in accordance with 40 C.F.R Part 112, if required.

16. Part II.B.2.c of the Permit requires the Permittee to prepare and implement a Best Management Practices (“BMP”) Plan according to Part IV of the Permit.

17. Part IV.A.1.f of the Permit requires, as a component of the BMP Plan, at least twice per week inspections of any structures that function to prevent stormwater pollution or to remove pollutants from stormwater and of the Facility in general to ensure that the BMP Plan is continually implemented and effective.

18. Part IV.A.4.a of the Permit requires a copy of the BMP Plan to be maintained at the Facility and available for inspection.

19. Part IV.A.4.b of the Permit requires that a log of the inspections required by the Permit be maintained at the Facility and be available for inspection. The log shall contain records of all inspections performed for the last three (3) years and the person performing the inspection shall sign each entry.

20. Part IV.A.4.c of the Permit requires the Permittee to provide training for any personnel required to implement the BMP Plan and to retain documentation of such training at the Facility. The documentation shall be available for inspection by representatives of ADEM.

22. On September 3, 2009, representatives of EPA, in conjunction with ADEM, performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at Respondent’s Facility to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the ADEM Permit.

23. As a result of the CSWEI, EPA determined that stormwater associated with industrial activity was discharged from the Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

24. During the CSWEI, EPA inspectors observed the following:

- A. Respondent failed to maintain records of monitoring information, copies of DMRs, and records of data used to complete the DMRs, for the last three (3) years, as required by Part I.B.4.a and Part I.B.4.b of the Permit.

- B. Respondent failed to conduct required monitoring for discharge monitoring point DSN003-1, as required by Part I.C.1.a of the Permit.
- C. Respondent failed to submit DMRs to ADEM for monitoring conducted between January 1, 2009, and June 30, 2009, for discharge monitoring points DSN001-1, DSN001-2, DSN001-3, and DSN003-1, as required by Part I.C.1.b of the Permit.
- D. Respondent failed to develop and implement an SPCC Plan as required by Part II.B.2.b of the Permit.
- E. Respondent failed to develop, implement, and maintain a BMP Plan, to include an inspection component, as required by Part II.B.2.c, Part IV.A.1.f, and Part IV.A.4.a of the Permit.
- F. Respondent failed to maintain a log of inspections as required by Part I.A.DSN011.3 and Part IV.A.4.b of the Permit.
- G. Respondent failed to retain documentation of training as required by Part IV.A.4.c of the Permit.

25. 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 ADEM Permit.

III. Stipulations and Findings

26. 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.

27. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

28. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

29. 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.

30. 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.

31. 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.

32. 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

33. 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 four thousand four hundred dollars (\$4,400) is an appropriate civil penalty to settle this action.

34. 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

35. 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, Georgia 30303-8960

and

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

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

37. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

38. 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.

39. 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.

40. 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.

41. 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.

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

43. 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.

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

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

For Complainant:

Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9576

For Respondent:

Dick Buchanan
President
Buchanan Lumber Mobile, Inc.
P.O. Box 2105
Mobile, Alabama 36601
(251) 433-9567

46. 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.

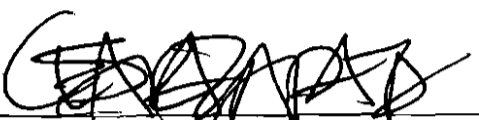
47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

48. 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:



César A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Date: 8/17/10

For RESPONDENT, BUCHANAN LUMBER MOBILE, INC.:



NAME: DICK BUCHANAN
TITLE: PRESIDENT

Date: 8/7/10

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4


IN THE MATTER OF:)
)
BUCHANAN LUMBER MOBILE, INC.) CONSENT AGREEMENT AND
MOBILE, ALABAMA) FINAL ORDER
)
)
RESPONDENT.) DOCKET NO. CWA-04-2010-4527(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: Oct 6, 2010



Susan B. Schub
Regional Judicial Officer

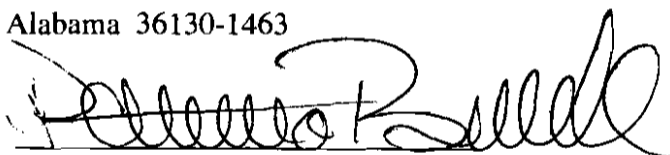
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Buchanan Lumber Mobile, Inc.**, Docket No. CWA-04-2010-4527(b) (filed with the Regional Hearing Clerk on OCT 07 2010, 2010) was served on OCT 07 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Paul Schwartz
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Dick Buchanan
President
Buchanan Lumber Mobile, Inc.
P.O. Box 2105
Mobile, Alabama 36601

Glenda Dean
Chief, Industrial/Municipal Branch
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, Alabama 36130-1463



Patricia A. Bullock
Regional Hearing Clerk
Sam Nunn Federal Center
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 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 8/17/10
(Name) (Date)

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

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Duchman Lumber Mobile, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4,400
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4527(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | | |
|--|-----------------------------|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) | 3. Designated Program Office |
|--|-----------------------------|------------------------------|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

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

Case Docket Control Number: CWA-04-2010-4527(b)

Total Amount Due: _____

Full payment due 30 days after issuance date of Sigrod CAJFO

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____