



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 26 2012

CERTIFIED MAIL 70113500000320640079
RETURN RECEIPT REQUESTED

Mr. Gordon Darby
GSR Jedburg, LLC
4142 Dorchester Road
Charleston, South Carolina 29405

Re: Consent Agreement and Final Order No. CWA-04-2012-4503(b)
National Pollutant Discharge Elimination System Permit No. SCR10L258
Strathmore PD
Summerville, South Carolina

Dear Mr. Darby:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency 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 \$19,000.

Should you have any questions or concerns regarding this matter, please contact Ms. Sara Schiff at (404) 562-9870 or via email at schiff.sara@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

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

Enclosure

cc: Glenn Trofatter
Bureau of Water
South Carolina Department of Health and Environmental Control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2012 JUN 26 AM 8:01
HEARING CLERK

IN THE MATTER OF:)
)
GSR JEDBURG, LLC) CONSENT AGREEMENT AND
STRATHMORE PD) FINAL ORDER
SUMMERVILLE, SOUTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2012-4503(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. 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 the EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, GSR Jedburg, LLC ("Respondent"), was a limited liability corporation formed 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, the Respondent owned and/or operated a construction site known as Strathmore PD ("Development") located at Jedburg Road and Interstate 26, in Summerville, South Carolina.

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 the 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. The EPA has granted the State of South Carolina through the South Carolina Department of Health and Environmental Control (“SCDHEC”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The SCDHEC issued a *NPDES General Permit for Stormwater Discharges From Large and Small Construction Activities*, Permit No. SCR100000 (“Permit”), in accordance with the Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and the CWA. The Permit was effective September 1, 2006, and has an expiration date of August 31, 2011.

8. The SCDHEC is responsible for the issuance, compliance, and enforcement of the South Carolina Pollution Control Act, S.C. Code Sections 48-1-10 *et seq.*, 1976, and the submission and approval of coverage under the Permit upon submission of a Notice of Intent (“NOI”).

9. Jedburg submitted to SCDHEC an NOI requesting permit coverage. A Notice of Coverage was sent to Jedburg with an effective date of December 11, 2009, and an expiration date of December 11, 2014.

10. In accordance with South Carolina General Assembly Bill 4445, existing developments may have coverage under their current Permit extended past the General Permit expiration date of August 31, 2011. SCDHEC extended coverage for the Development.

11. Part 3.6.A of the Permit requires all erosion and sediment control measures and other protection measures be maintained in effective operating condition. If self-inspections identify BMPs that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event.

12. Part 3.6.B of the Permit requires that if modification of existing BMPs or additional BMPs are necessary to comply with the requirements of the Permit or with water quality standards, such modifications or additions must be completed before the next storm event.

13. Part 3.10.E of the Permit requires inspections to include: all areas disturbed by construction activity; areas used for storage of materials that are exposed to precipitation; evidence of, or the potential for, pollutants entering the stormwater conveyance system; sedimentation and erosion control measures for proper operations; discharge locations to ascertain the effectiveness of erosion control measures; and locations where vehicles enter or exit for evidence of off-site sediment tracking.

14. Part 3.10.G of the Permit requires the completion of an inspection report which must include, at a minimum: (1) the inspection date; (2) names, titles and qualifications of personnel making the inspection; (3) weather information for the period since the last inspection, including the best estimate of the beginning, duration, and approximate amount of rainfall for each storm event (in inches) and whether any discharges occurred; (4) weather information and a description of any dischargers occurring at the time of the inspection; (5) locations of discharges of sediment or other pollutants; (6) locations of BMPs requiring maintenance; (7) locations of BMPs failing to operate as designed or proven inadequate; (8) locations where additional BMPs are needed; and (9) corrective action required, including any changes to SWPPP and implementation data.

15. Part 3.13.A of the Permit requires control measures to be properly selected, installed and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

16. Part 3.13.B of the Permit requires the removal of off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts.

17. Part 3.13.D of the Permit requires initiation of stabilization measures as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.

18. Part 3.13.E of the Permit requires a combination of sediment and erosion control measures to achieve maximum pollutant removal.

19. Part 4.4 of the Permit requires the selection, implementation and maintenance of BMPs that minimize pollutants in the discharge or as necessary to meet water quality standards.

20. On March 29, 2011, representatives of the EPA in conjunction with the South Carolina Department of Health and Environmental Control-Ocean and Coastal Resource Management (SCDHEC-OCRM) performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Development to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 126.26 and the SCDHEC Permit.

21. As a result of the CSWEI, the EPA, Region 4 has determined that the Respondent discharged stormwater associated with industrial activity from its Development within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into Dawson Branch which flows into Cypress Swamp, a navigable water of the United States.

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

- A. Silt fencing was improperly installed and maintained throughout the Development. Parts 3.6.A, 3.13.A and 4.4 of the Permit require BMPs be properly selected, implemented and maintained to minimize pollutants in

discharges. Part 3.6.B of the Permit requires the modification of existing BMPs or additional BMPs as necessary to comply with the Permit or with water quality standards. Sediment-laden stormwater undercut portions of the silt fencing, allowing sediment to discharge offsite. There were also holes in some of the silt fencing allowing additional sediment to discharge offsite.

- B. The sediment traps and sedimentation pond slopes need to be maintained and stabilized. Parts 3.6.A, 3.13.A and 4.4 of the Permit require BMPs be properly selected, implemented and maintained to minimize pollutants in discharges. Part 3.6.B of the Permit requires the modification of existing BMPs or additional BMPs as necessary to comply with the Permit or with water quality standards.
- C. A ditch was cut along the newly-paved roadway to allow stormwater to flow directly into the sediment basin outfall and then offsite. However, stormwater flow in the ditch bypasses BMPs designed to trap sediment before flowing into a culvert and offsite into Dawson Branch. Parts 3.13.E and 4.4 of the Permit require BMPs be selected, implemented and maintained to achieve maximum pollutant removal.
- D. There was no stabilization throughout the Development. Portions of the site where construction activities have temporarily or permanently ceased need to be stabilized within fourteen (14) days, as required by Part 3.13.D of the Permit.
- E. Sediment-laden stormwater was discharging during the CSWEI from the Development through a culvert under I-26, into a ditch and then into Dawson Branch. Evidence of sediment accumulation was present in both the ditch and Dawson Branch. Parts 3.13.E and 4.4 of the Permit require BMPs be selected, implemented and maintained to achieve maximum pollutant removal from stormwater discharges. Part 3.13.B of the Permit requires sediment that has accumulated offsite be removed as often as necessary to prevent impacts.

23. Jedburg submitted a written response to the Administrative Order to the EPA dated September 15, 2011 on September 23, 2011. The response included copies of inspection reports from March 23, 2011 and March 30, 2011. A Show Cause meeting was held on September 27, 2011, with representatives from the EPA, Jedburg and Forsberg Engineering and Surveying. Additional inspection reports were submitted to the EPA on October 14, 2011. Upon review of submitted information and discussions during the Show Cause meeting, the following additional violations were noted:

- A. Inspections did not include all areas of the site with the potential for offsite impacts as required by Parts 3.10.E and 3.10.G of the Permit. The inspector did not evaluate the condition of the water discharging offsite into a culvert under I-26, into a ditch and then into Dawson Branch to ensure sediment was not leaving the project site and accumulating in Dawson Branch. Inspection

reports from March 23, 2011 and March 30, 2011, right before and right after the CSWEI, stated there were no offsite impacts. However, the EPA documented evidence of sediment accumulation in Dawson Branch during the CSWEI.

24. Therefore, the 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 SCDHEC Permit.

III. Stipulations and Findings

25. 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.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. 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 nineteen thousand dollars (\$19,000) is an appropriate civil penalty to settle this action.

33. 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

34. 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
Atlanta Federal Center
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
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

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

36. 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

37. 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.

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 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.

39. 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.

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 the Respondent and its officers, directors, employees, agents, successors and assigns.

42. 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.

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:

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

For the Respondent:

R. Gordon Darby
GSR Jedburg, LLC
4142 Dorchester Road
Charleston, South Carolina 29405
(843) 566-9952

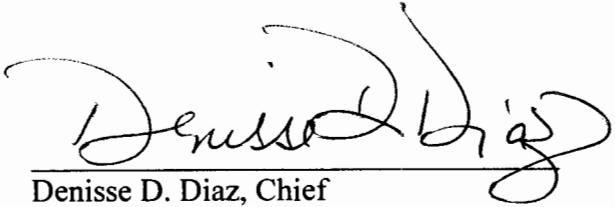
45. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

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.

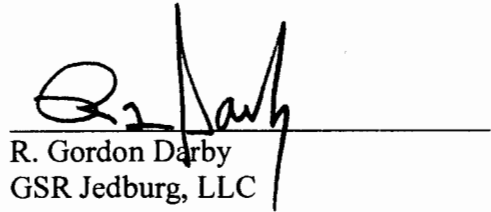
AGREED AND CONSENTED TO:
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 6/20/12

For RESPONDENT, GSR JEDBURG, LLC:



R. Gordon Darby
GSR Jedburg, LLC

Date: 3/30/12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
GSR JEDBURG, LLC) CONSENT AGREEMENT AND
STRATHMORE PD) FINAL ORDER
SUMMERSVILLE, SOUTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2012-4503(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: June 25, 2012

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

Docket No. CWA 04-2012-4503(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached CONSENT AGREEMENT AND FINAL ORDER in the matter of GSR Jedburg LLC, Docket No. CWA-04-2012-4503(b) (filed with the Regional Hearing Clerk JUN 26 2012, 2012, was served JUN 26 2012, 2012, in the manner specified to each of the persons listed below.

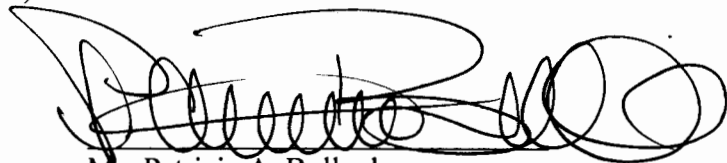
By hand-delivery:

Wayne Lee
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

R. Gordon Darby
GSR Jedburg, LLC
4142 Dorchester Road
Charleston, South Carolina 29405

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



Ms. Patricia A. Bullock
Regional Hearing Clerk
Sam Nunn Federal Center
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511