

**Westlaw Delivery Summary Report for TATE,CHRISTOPHER 6221637**

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United States Environmental Protection Agency (E.P.A.)

Region IV

IN THE MATTER OF: LINDSEY ESTATES, LLC LINDSEY ESTATES GREENWOOD,  
ALABAMA, RESPONDENT.

Clean Water Act

CWA 04-2007-4537(B)  
September 4, 2007

CONSENT AGREEMENT AND FINAL ORDER

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

II. Allegations

3. At all times relevant to this action, Lindsey Estates, LLC ("Respondent"), was a limited liability corporation formed 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 construction site known as Lindsey Estates ("Facility") located at Lindsey Loop Road, Greenwood, Alabama, and is the "Operator" of the Facility within the meaning of Rule 335-6-12-.02(n) of the Permit Regulations.

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 a 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 storm water, into navigable waters subject to specific terms and conditions. EPA has granted the State of Alabama through the Department of Environmental Management ("ADEM") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. ADEM issued Administrative Code Chapter 335-6-12, the National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities ("Permit Regulations"), in accordance with [Code of Alabama 1975, Sections 22-22-1 to 22-22-14 and Sections 22-22A-1 to 22-22A-16 et seq.](#), as amended, effective March 1, 2003, and revised on September 19, 2006.

8. Regulated facilities must submit a Notice of Registration ("NOR") requesting coverage under the Permit Regulations, and must submit a NOR each year thereafter to maintain coverage until all disturbed areas have been reclaimed and/or effective storm water quality remediation has been achieved. The Permit Regulations also require that a Construction **Best Management Practices** Plan ("CBMPP"), designed to minimize pollutant discharges in storm water runoff to the maximum extent practicable during land disturbance activities, be submitted, fully implemented and effectively maintained. The ADEM Water Division is responsible for the approval of coverage under the Permit Regulations, upon submission of the NOR and CBMPP.

9. On July 5, 2006, Respondent submitted a NOR requesting permit coverage for its Facility to ADEM. A Notice of Coverage was sent to Respondent with an effective date of July 5, 2006, and an expiration date of July 4, 2007. ADEM received a subsequent NOR from the Respondent on July 12, 2007. The re-registration Notice of Coverage issued to the Respondent contains an expiration date of July 4, 2008.

10. Rule 335-6-12-.06(4) of the Permit Regulations requires the Permittee to take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge(s).

11. Rule 335-6-12-.21(4) of the Permit Regulations requires the Permittee to ensure that **Best Management Practices** ("BMPs") are designed, implemented and regu-

larly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected or predicted during construction disturbance, and during extended periods of adverse weather and seasonable conditions.

12. Rule 335-6-12-.21(5)(a) of the Permit Regulations requires the Permittee to ensure that BMPs are fully implemented and regularly maintained.

13. Rule 335-6-12-.21(6) of the Permit Regulations requires the Permittee to remediate any off-site deposition or discharge of sediment and other pollutants and implement measures to remediate any impacts to the maximum extent practicable.

14. Rule 335-6-12-.35(10)(a) of the Permit Regulations requires the Permittee to take prompt steps to mitigate and prevent/minimize any adverse impact resulting from noncompliance with any requirements of the Permit; determine the nature and impact of the non-complying discharge; and remove, to the maximum extent practical, pollutants deposited off-site or in any waterbody or storm water conveyance.

15. Rule 335-6-12-.35(11)(a) of the Permit Regulations requires the Permittee to take all reasonable steps, including cessation of construction, building production or other activities, to prevent/minimize any violation of the Permit or to prevent/minimize any adverse impacts.

16. On February 7, 2007, representatives of EPA in conjunction with ADEM performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondent's Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R) § 122.26, and the ADEM Permit.

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

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

A. Respondent failed to take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of the groundwater or surface water receiving the discharge(s), as required by Rule 335-6-12-.06(4) of the Permit Regulations.

B. Respondent failed to ensure that BMPs are designed, implemented, and regularly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected/predicted during construction disturbance, and during extended periods of adverse weather and seasonable conditions, in accordance with Rule 335-6-12-.21(4) of the Permit Regulations. Sediment was observed in the receiving stream.

C. Respondent failed to fully implement BMPs, as required by Rule 335-6-12-.21(5)(a) of the Permit Regulations. Sediment was impacting a stream at the Facility in several locations due to a total lack of BMPs.

D. Respondent failed to remediate any off-site deposition or discharge of sediment and other pollutants and implement measures to remediate any impacts to the maximum extent practicable as required by Rule 335-6-12-.21(6) of the Permit Regulations. Sediment was impacting a stream at the Facility in several locations due to a total lack of BMPs.

E. Respondent failed to take prompt steps to mitigate and prevent/minimize any adverse impact resulting from noncompliance with any requirements of the Permit; determine the nature and impact of the non-complying discharge; and remove, to the maximum extent practical, pollutants deposited off-site or in any waterbody or storm water conveyance as required by Rule 335-6-12-.35(10)(a) of the Permit Regulations. Sediment was impacting a stream at the Facility in several locations due to a total lack of BMPs.

F. Respondent failed to take all reasonable steps, including cessation of construction, building production or other activities, to prevent/minimize any violation of the Permit or to prevent/minimize any adverse impacts as required by Rule 335-6-12-.35(11)(a) of the Permit Regulations. Sediment was impacting a stream at the Facility in several locations due to a total lack of BMPs.

19. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, [33 U.S.C. §§ 1311](#) and [1342\(p\)](#), by failing to comply with the Permit, and for discharges not authorized by the Permit.

### III. Stipulations and Findings

20. 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.

21. 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.

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

23. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO.

24. By signing this CA/FO, Respondent certifies that the information it has sup-

plied 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.

25. 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.

26. 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

27. 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 Ten Thousand Dollars (\$10,000.00) is an appropriate civil penalty to settle this action.

28. 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 Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099

29. 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

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Programs Enforcement Branch  
Water Management Division

61 Forsyth Street, S.W. Atlanta, GA 30303-8960.

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

31. Pursuant to 40 C.F.R. Part 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.

32. 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

33. 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.

34. 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.

35. 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 vi-

olations 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.

36. 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.

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

38. 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.

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

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

For Complainant:

Tanya Floyd  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9813

For Respondent:

Connor Farmer  
Lindsey Estates, LLC  
15 Southlake Lane  
Hoover, Alabama 35244  
(205) 790-4954

41. 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.

42. 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

43. 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:  
Douglas F. Mundrick, P.E.

Chief

Water Programs Enforcement Branch

Water Management Division

U.S. EPA, Region 4

2007 WL 2908343 (E.P.A.)

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