

**PUBLIC NOTICE**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**  
**WATER PROTECTION DIVISION**  
**NPDES PERMITTING AND ENFORCEMENT BRANCH**  
**ATLANTA FEDERAL CENTER**  
**61 FORSYTH STREET, S.W.**  
**ATLANTA, GEORGIA 30303**

**DATE: April 21, 2016**

**PUBLIC NOTICE No. CWA-04-2016-4510(b)**

**Notice of Proposed Issuance of  
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2016-4510(b), that assesses an administrative penalty of \$34,250.00 to Wellington Development Company, LLC (Respondent), 3505 Bent River Road, Birmingham, Alabama, under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA) 33 U.S.C. § 1319(g)(2)(A).

The CAFO will settle the EPA allegations that the Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with its State of *Alabama National Pollutant Discharge Elimination System Discharges From Construction Activities that Result in a Total Land Disturbance of One Acre or Greater and Sites Less Than One Acre but are Part of a Common Plan or Development or Sale* permit, at its construction site known as Southern Trace 9<sup>th</sup> Addition, located at Southern Trace Drive, Leeds, Jefferson County, Alabama.

Any person wishing to comment on any aspect of the proposed CAFO Docket No. CWA-04-2016-4510(b) may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

This CAFO issued pursuant to CWA Section 309(g) is being simultaneously commenced and settled under 40 C.F.R. § 22.13(b), however the EPA cannot finally resolve or settle this CAFO until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>WELLINGTON DEVELOPMENT</b>	)	<b>FINAL ORDER</b>
<b>COMPANY, LLC</b>	)	
<b>LEEDS, ALABAMA</b>	)	
	)	
<b>RESPONDENTS.</b>	)	<b>DOCKET NO. CWA-04-2016-4510(b)</b>
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**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*, 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 of the EPA, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. At all times relevant to this action, Wellington Development Company, LLC (“Respondent”), were both limited liability corporations 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, the Respondent owned and/or operated a construction site known as Southern Trace 9<sup>th</sup> Addition (“Site”) located at Southern Trace Drive, in Leeds, 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 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. Pursuant to Section 402(b) of the CWA, the EPA has granted the State of Alabama through the Department of Environmental Management (“ADEM”) approval to administer the NPDES permit program.

7. ADEM issued the *National Pollutant Discharge Elimination System Discharges From Construction Activities that Result in a Total Land Disturbance of One Acre or Greater and Sites Less Than One Acre but are Part of a Common Plan or Development or Sale*, (“Permit”), in accordance with Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 and 22-22A-15 et seq., effective on April 1, 2011, and expiring on March 31, 2016.

8. The ADEM is responsible for the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting Permit coverage and development and implementation of a Construction Best Management Practices Plan (“CBMPP”).

9. On April 30, 2013 and March 30, 2015, Respondent submitted to ADEM an NOI and CBMPP requesting permit coverage for the Site. A Notice of Coverage was sent to Respondent with an effective date of June 19, 2013 and an expiration date of March 31, 2016.

10. The Permit includes the following provisions:

- a. Part III.B of the Permit requires that temporary stabilization of disturbed areas must be initiated immediately whenever work toward project completion and final stabilization has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.
- b. Part III.D.2 of the Permit requires that the Permittee shall properly implement and regularly maintain the controls, practices, devices, and measures specified in the Construction Best Management Practices Plan (“CBMPP”).
- c. Part III.D.3 of the Permit requires that the CBMPP shall include: (a) A general description of the construction site activity, including: (ii) Identification of all known operators of the construction site and the areas of the site over which each operator has control.
- d. Part III.D.3.(d) of the Permit requires that a detailed description of the erosion controls, sediment controls, and management practices to be implemented at the

site during each sequence of activity should be listed in the CBMPP in accordance with Part III.A.

- e. Part III.D.3.(l) of the Permit requires that the CBMPP shall include a topographic map, clearly showing: the location of the construction site, pre-construction contours, property boundaries, areas to be disturbed, identification of sediment control measures, erosion control measures, planned stabilization measures, other site management practices, location of all waters of the state within a one mile radius, locations or wetlands and riparian zones and locations of all points of discharge to waters of the State.
- f. Part III.D.3.(l)(v) of the Permit requires that the CBMPP shall include: identification of sediment control measures, erosion control measures, planned stabilization measures, two stock piles, and other site management practices.
- g. Part III.D.4.(a) of the Permit requires that the CBMPP shall be updated as necessary to address changes in the construction activity, site weather patterns, new TMDLs finalized or approved by EPA, new 303(d) listings approved by EPA, or manufacturer specifications for specific control technologies.
- h. Part III.D.4.(b) of the Permit requires that the CBMPP shall be amended within seven calendar days.
- i. Part III.D.4.(d) of the Permit requires that a copy of the CBMPP shall be maintained at the site during normal operating hours as defined by Part IV. T. of this permit when regulated land disturbing activities are occurring.
- j. Part III.G.1.(c) of the Permit requires that the Permittee shall maintain a log of all daily observations and record in such log any rainfall measurements and BMP deficiencies observed.
- k. Part III.G.2.(a)(i) of the Permit requires that effective erosion controls and sediment controls have been fully implemented and maintained in accordance with this permit, the site CBMPP, and the Alabama Handbook.
- l. Part III.G.2.(c) of the Permit requires that a site inspection shall be performed once each month and after any qualifying precipitation event, commencing as promptly as possible, but no later than 24-hours after resuming or continuing active construction or disturbance and completed no later than 72-hours following the qualifying precipitation event.
- m. Part III.G.2.(g)(i) of the Permit requires that the inspection record shall include the site name and location, discharge point number, date, time and exact place of any sampling performed;

- n. Part III.G.2.(g)(iii) of the Permit requires that the inspection record shall include the dates and times of the inspection and any sample or measurements taken.
- o. Part III.G.2.(g)(vi) of the Permit requires that the inspection record shall include weather conditions at the time of the inspection.
- p. Part III.G.3 of the Permit- CBMPP Evaluations: The Qualified Credentialed Professional shall perform an onsite evaluation of all erosion and sediment controls being implemented for adequacy and consistency with site conditions.
- q. Part III.H.3 of the Permit - The operator shall take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.
- r. Part III.J of the Permit – Precipitation Measurement: The Permittee shall measure and record all precipitation occurring at the construction site. Precipitation measurements shall be taken using continuous recorders or daily readings of an onsite rain gauge or other measurement device acceptable to the Department. Precipitation measurements must be representative of the Permittee’s site.
- s. Part IV.D of the Permit – Proper Operation and Maintenance: The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training and adequate laboratory and process controls, including appropriate quality assurance procedures. Operation of backup or auxiliary facilities is required only when necessary to achieve compliance with the conditions of this permit.
- t. Part IV.G.3 of the Permit requires that if the Permittee becomes aware that it failed to submit any relevant facts in the NOI; or submitted incorrect information in the NOI, it shall promptly submit such facts or information with a written explanation for the mistake and/or omission.
- u. Part V of the Permit requires that the Permittee of a priority construction site disturbing ten acres or more at one time shall conduct turbidity monitoring in accordance with Part V.

12. On March 26, 2014, representatives of the EPA in conjunction with the ADEM performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Respondent’s Site 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 Permit.

13. As a result of the CSWEI and the 308 response, the EPA has determined that the Respondent discharged stormwater associated with construction activity from the Site within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

14. During the CSWEI, as noted on the CSWEI Report, the following was observed:

- A. Part III.B - There were areas on Site of bare earth and dirt piles that had not been stabilized within 13 days of work having had ceased in violation of Part III.B of the Permit.
- B. Part III.D.2 - Several areas throughout the Site did not have adequate vegetation coverage as required by the CBMPP this resulted in rills forming in many areas and Outlet Protection (OP) and riprap-lined apron are missing from outfall in violation of Part III.D.2. of the Permit.
- C. Part III.D.3.(a)(ii) - The CBMPP listed several different operators of the construction Site than the Respondent named in their 308 response. The identification of all known operators of the construction Site were not listed in the CBMPP in violation of Part III.D.3.(a)(ii) of the Permit.
- D. Part III.D.3.(d) - The diversion berms (DV) that were installed on the southeastern portion of the Site were not shown on the CBMPP in violation of Part III.D.3.(d) of the Permit.
- E. Part III.D.3.(l) - Property boundaries, areas to be disturbed, control measures, and waters/wetlands/riparian zones, and point of discharge were missing from CBMPP map and the CBMPP map did not contain all stormwater management structures in violation of Part III.D.3.(l) of the Permit.
- F. Part III.D.3.(l)(v) - In the map, identification of sediment control measures, erosion control measures, planned stabilization measures, two stock piles, and other Site management practices were not indicated in violation of Part III.D.3.(l)(v) of the Permit.
- G. Part III.D.4.(a) - The CBMPP was not updated as necessary to address changes in the construction activity, Site weather patterns, new TMDLs finalized or approved by EPA, new 303(d) listings approved by EPA, or manufacturer specifications for specific control technologies in violation of Part III.D.4.(a) of the Permit.
- H. Part III.D.4.(b) - The CBMPP was not revised in response to the changing development plans for the Site within seven calendar days in violation of Part III.D.4 of the Permit.

- I. Part III.D.4.(d) - A copy of the CBMPP was not maintained at the Site when regulated land disturbing activities were occurring in violation of Part III.D.4.(d) of the Permit.
- J. Part III.G.1.(c) - Daily observations were missing for 3/31/2014, and rain log records were missing from December 2013 and January 1-4, 2014 in violation of Part III.G.1.(c) of the Permit.
- K. Part III.G.2.(a)(1) – The Site lacked seeding, straw, Block and Gravel Inlet Protection, Outlet Protection, and vegetated buffer controls required by the CBMPP in violation of Part III.G.2.(a)(1) of the Permit.
- L. Part III.G.2.(c) – There were twelve missing inspections after a qualifying precipitation event on 12/28/13, 2/2/14, 2/3/14, 2/21/14, 3/16/14, 3/28/14, 4/6/14, 4/7/14, 4/14/14, 4/28/14, 5/14/14, and 6/7/14 in violation of Part III.G.2.(c) of the Permit.
- M. Part III.G.2.(g)(i) - The Site inspection records did not include the discharge point number and the time of inspection in violation of Part III.G.2.(g)(i) of the Permit.
- N. Part III.G.2.(g)(iii) - Rain event inspections on, 12/27/13, 1/29/14, and 2/27/14, lacked time of inspection in violation of Part III.G.2.(g)(iii)
- O. Part III.G.2.(g)(vi) – There were no weather conditions listed in the Site inspection report at time of inspection in violation of Part III.G.2.(g)(vi) of the Permit.
- P. Part III.G.3 - The CBMPP on ADEM’s website states that the disturbed area is well under 10 acres. The CBMPP submitted to the EPA states that the “the drainage area for check dams should be less than 10 acres which falls well under the total disturbed site acreage of 4.9 acres.” According to the 308 Information Request response and the revised Notice of Intent (NOI) the Site has 15.57 disturbed acres. *The Alabama Handbook for Erosion Control and Stormwater Management on Construction Sites and Urban Areas*(as referred to in the Permit as the Alabama Handbook) and the CBMPP state that the Check Dams are for areas under 5 or 10 acres, resulting in an inappropriate Best Management Practice (“BMP”) selection. The CBMPP does not reflect adequate erosion and sediment controls for the acreage of the Site in violation of Part III.G.3 of the Permit.

- Q. Part III.H.3 - Sediment overtopped silt fence at the southeastern boundary of the Site demonstrates that Respondent failed to take all reasonable steps to remove pollutants deposited offsite in violation of Part III.H.3. of the Permit.
- R. Part III.J – There were no rain gauges onsite nor were there any other devices to measure the precipitation on the Site in violation of Part III.J. of the Permit.
- S. Part IV.D - Silt fencing along the southeastern side of the Site was more than half full of sediment, silt fencing on the southeastern edge had sediment overtopping fences and accumulating both on-site and off-site. Other silt fences were not properly trenched, entrance pad was in need of maintenance, unstablized slopes had erosion rills, Diversion Berm (DV) BMP not properly installed. The construction exit did not have adequate gravel, and off-site vehicle tracking of dirt was observed on the southern side of the Site. This indicates the Responden’s failure to properly operate and maintain the Site in violation of Part IV.D of the Permit.
- T. Part IV.G.3 - The Northern “spoil area” and access road are missing from the NOI in violation of Part IV G.3 of the Permit.
- U. Part V - Required turbidity monitoring for areas of disturbance over 10 acres was not occurring in violation of Part V of the Permit.
- V. 40 C.F.R. §§ 122.22(b) and (d) - Wellington Development is also in violation of 40 C.F.R. §§ 122.22(b) and (d) which requires that any information requested by the EPA shall be signed by a duly authorized person and that the person signing shall certify that the information is true and accurate. The language for the certification is provided at 40 C.F.R. § 122.22(b) and was also provided to Wellington in the EPA’s 308 Information Request. The 308 Information Request response that was submitted to the EPA by Wellington was not signed nor was it certified.

15. Therefore, the Respondents have 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**

16. 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.

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

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

19. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consent to the other conditions set forth in this CA/FO.

20. 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.

21. 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 Respondents was materially false or inaccurate at the time such information or certification was provided to the EPA.

22. 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**

23. 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 thirty-four thousand two hundred and fifty dollars (\$34,250) is an appropriate civil penalty to settle this action.

24. 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 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

25. At the time of payment, the Respondents 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  
Municipal and Industrial Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

27. 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**

28. 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.

29. 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.

30. 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 Respondents 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.

31. 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.

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

33. 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.

34. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

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

For Complainant:

Wilda Cobb  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9530

For the Respondents:

Charles Kessler, Jr.  
Wellington Development Company, LLC  
3505 Bent River Road  
Birmingham, Alabama 35216  
(205)-985-7171

36. 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.

37. 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**

38. 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:**

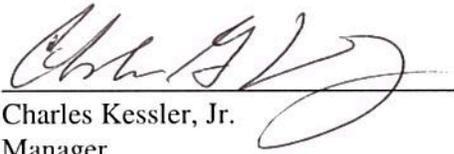
**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA, Region 4

Date: \_\_\_\_\_

**For RESPONDENTS:**

DOCKET NO. CWA-04-2016-4510(b)

A handwritten signature in black ink, appearing to read "Charles Kessler, Jr.", written over a horizontal line.

Charles Kessler, Jr.  
Manager  
Wellington Development Company, LLC

Date: 4-8-16

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>WELLINGTON DEVELOPMENT</b>	)	<b>FINAL ORDER</b>
<b>COMPANY, LLC</b>	)	
<b>SOUTHERN TRACE 9<sup>th</sup> ADDITION</b>	)	
<b>LEEDS, ALABAMA</b>	)	
	)	
<b>RESPONDENTS.</b>	)	<b>DOCKET NO. CWA-04-2016-4510(b)</b>
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**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*, 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), Respondents is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

\_\_\_\_\_  
Tanya Floyd  
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 \_\_\_\_\_, **Docket No. CWA-04-2016-4510(b)** (filed with the Regional Hearing Clerk on \_\_\_\_\_, 2016, was served on \_\_\_\_\_, 2016, in the manner specified to each of the persons listed below.

By hand-delivery: Wilda Cobb  
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: Charles Kessler, Jr.  
President  
Wellington Development Company, LLC  
3505 Bent River Road  
Birmingham, Alabama 35216

Derick Houston  
Chief, NPDES Enforcement Branch  
Alabama Department of Environmental  
Management  
P. O. Box 301463  
Montgomery, Alabama 36130-1463

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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