

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. **7054 20**

MCCARTHY BUILDING COMPANIES, INC.
6225 N. 24TH STREET, SUITE 200
PHOENIX, ARIZONA 85016

RESPONDENT

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission), acting through the staff and Interim Executive Director of the Mississippi Department of Environmental Quality (MDEQ), Complainant, and McCarthy Building Companies, Inc., Respondent, in the above captioned cause and agree as follows:

1.

By letter dated November 15, 2019, Respondent was contacted by Complainant and notified of the following violations of Large Construction General Permit Coverage No. MSR107842 at the Meridian III Solar Facility construction site located at 2995 Knox Road, Toomsaba, MS 39364 in Lauderdale County:

- A. ACT 6 S-1(1): Respondent failed to implement a site-specific Storm Water Pollution Prevention Plan (SWPPP).
- B. ACT 6 S-1(2): Respondent failed to install structural practices described in ACT 5 T-6.
- C. ACT 6 S-2(9): Respondent failed to install additional and/or alternative erosion and sediment controls.
- D. ACT 6 S-3(11): Respondent failed to maintain erosion and sediment controls.

- E. ACT 6 S-5(2): Respondent failed to conduct storm water control inspections.
- F. ACT 6 L-1(2): Respondent failed to discharge storm water without eroded soils.
- G. ACT 7 L-1(3): Respondent discharged storm water inconsistent with receiving waters.

2.

In lieu of a formal enforcement hearing concerning the violations listed above, Complainant and Respondent agree to settle this matter as follows:

- A. Respondent agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$362,550.00. Respondent shall pay this penalty to MDEQ within sixty (60) days after this Agreed Order has been executed by the MDEQ Interim Executive Director or his designee. The settlement payment shall be submitted to:
 - Mississippi Department of Environmental Quality
 - Attn: Accounts Receivable
 - P.O. Box 2339
 - Jackson, MS 39225
- B. On or before September 1, 2020, Respondent shall have implemented the best management practices (BMPs) necessary to prevent erosion from the site.
- C. On or before October 1, 2020, Respondent shall submit documentation of completion of paragraph 2.B. to MDEQ.
- D. On or before January 30, 2021, Respondent shall have achieved final site stabilization.
- E. On or before February 28, 2021, Respondent shall submit documentation of completion of paragraph 2.D. to MDEQ.
- F. If Respondent fails to comply with any of the requirements established in paragraphs 2.A, 2.B., 2.C. 2.D. or 2.E. of this Agreed Order, Respondent shall pay a stipulated penalty payable to Complainant, due within forty-five (45) days of written notification from MDEQ, in the amount of \$25,000.00 for each missed deadline. Respondent shall also pay an additional stipulated penalty in the amount of \$1,000.00

per day for each missed deadline until compliance with the applicable paragraph(s) is achieved.

3.

Complainant and Respondent agree that all other limits and requirements of Large Construction General Permit Coverage No. MSR107842 shall remain in effect.

4.

Notwithstanding the provision by this Agreed Order for stipulated penalties to accrue in certain circumstances, in the event Respondent fails, or refuses, to pay any stipulated penalty provided for in this Agreed Order, the Commission reserves the right to conduct a separate enforcement action concerning any violation by Respondent of this Agreed Order or of the laws or regulations within the jurisdiction of the Commission. If the Commission conducts a separate enforcement action concerning a violation for which stipulated penalties are provided in this Agreed Order, the Commission will be deemed to have waived the right to collect stipulated penalties in lieu of the right to conduct the separate enforcement action. In that separate enforcement action, the Commission may seek penalties, injunctive relief, or other appropriate relief different from or in the excess of the amount of stipulated penalties included in this Agreed Order, up to and including the statutory maximum penalty.

5.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondent fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

6.

Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

7.

The parties agree that, by entering into this Agreed Order and agreeing to the terms and conditions set forth herein, Respondent does not admit any of the allegations listed above and nothing contained herein shall be in any way construed as an admission of liability by Respondent. Without admitting any liability, Respondent consents to entry of this Agreed Order, which the parties agree shall serve as the full resolution of the violations listed above. The parties further agree that the Commission continues to assert that the matters set forth above were violations of the environmental laws, regulations and/or permits applicable to Respondent.

8.

Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. § 49-17-31, and that it has made an informed waiver of that right.

ORDERED, this the 8th day of July, 2020.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 

CHRIS WELLS
INTERIM EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 30TH day of JUNE, 2020.

MCCARTHY BUILDING COMPANIES, INC.

BY: *Robert Kohlburn*
ROBERT KOHLBURN

TITLE: EXECUTIVE VICE PRESIDENT

STATE OF ARIZONA

COUNTY OF MARICOPA

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named ROBERT KOHLBURN who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the EXECUTIVE VICE PRESIDENT of McCarthy Building Companies, Inc. and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 30th day of JUNE, 2020.

Arline Nazario
NOTARY PUBLIC

My Commission expires: 2-5-2023

