

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU**

In the matter of administrative
proceedings against:

ACO-FTO-SW08-009
Date Entered: 8-27-08

Builders Financial Services, Inc.
601 Tallmadge Road
Kent, Ohio 44240

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (ACO) results from allegations by the Michigan Department of Environmental Quality (MDEQ), Water Bureau (WB). The MDEQ alleges that Builders Financial Services, Inc., which owns 13 building lots within the Liberty Square Subdivision, lots 6, 7, 9, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, located on Bangor Road, between Wheeler and Wilder Roads, Town 14N, Range 5E, Bangor Township, Bay County, State of Michigan, is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq.; and Part 91, Soil Erosion and Sedimentation Control, of the NREPA (MCL 324.9101 et seq.), and the rules promulgated thereunder. Builders Financial Services, Inc. is a person, as defined by Section 301 of the NREPA, and is registered with the Ohio Secretary of State as a domestic, for-profit corporation, with the Articles of Incorporation attached to this ACO as Attachment 1. Builders Financial Services, Inc. and the MDEQ agree to resolve violations set forth herein through entry of this ACO.

I. STIPULATIONS

Builders Financial Services, Inc. and the MDEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 et seq., is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31 of the NREPA, MCL 324.3101 et seq., and rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 The MDEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the MDEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.4 Part 91, SESC, of the NREPA, (Part 91) MCL 324.9101 et seq. and the rules promulgated pursuant thereto, provides for the control of soil erosion and off-site sedimentation.
- 1.5 Builders Financial Services, Inc. stipulates to the issuance and entry of this ACO to comply by consent and stipulates that the termination of this matter by a final order to be entered as an ACO is proper and acceptable. Builders Financial Services, Inc. further agrees not to contest the issuance of this ACO. This ACO, thus, shall be considered a final order of the MDEQ and shall become effective on the date it is signed by the Field Operations Division Chief of the WB, as delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.6 Builders Financial Services, Inc. and the MDEQ agree that the signing of this ACO is for settlement purposes only and does not constitute an admission by Builders Financial Services, Inc. that the law has been violated.
- 1.7 Builders Financial Services, Inc. shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II, Compliance Program, of this ACO.

II. ALLEGATIONS

- 2.1 Builders Financial Services, Inc. purchased title to lots 6, 7, 9, 15, 16, 17, 18, 19, 20, 21, 23, 25, and 26 within the Liberty Square Subdivision on March 31, 2006. The thirteen (13) lots total about 3.8 acres of land. The MDEQ alleges that the lots had been cleared of vegetation, which constitutes an earth change activity under Section 9112 of Part 91 (MCL 324.9112). The lots were originally permitted under SESC permit

number BC-43-04, on May 21, 2004, in accordance with Part 91. BC-43-04 expired on May 30, 2005.

- 2.2 The MDEQ alleges that Builders Financial Services, Inc. failed to apply for and be issued a SESC permit from the Bay County Enforcing Agent (Bay CEA) for the ongoing earth change activity on its lots, in violation of Section 9112 of Part 91 (MCL 324.3112).
- 2.3 The MDEQ alleges that Builders Financial Services, Inc. failed to install and implement the soil erosion control measures for its 13 lots. Additionally, the MDEQ alleges that Builders Financial Services, Inc. failed to ensure that the required SESC measures were under the specific supervision and control of a storm water operator who has been certified by the MDEQ as properly qualified to operate the soil erosion control measures in violation of 1979 AC R 323.2190 (Rule 2190).
- 2.4 On April 1, 2008, Builders Financial Services, Inc. was issued a SESC permit (permit number BC 12-08) from the Bay CEA with SESC control plan that includes all of the measures necessary to stabilize the entire earth disturbance on the 13 lots to cease the flow of soil and sediment or other pollutants to the waters of the state.
- 2.5 Due to the MDEQ-alleged lack of adequate soil erosion and storm water control measures, the MDEQ alleges that Builders Financial Services, Inc. failed to plan, implement, and maintain acceptable SESC measures in conformance with Part 91, and failed to effectively reduce accelerated soil erosion and off-site sedimentation from the land on which the earth change has been made, the 13 lots, in violation of Section 9116 of Part 91; thereby resulting in the discharge of soil and sediments to the waters of the state, in violation of Section 3019 of Part 31.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT Builders Financial Services, Inc. will take the following actions to prevent further violations of Part 31 and Part 91:

- 3.1 Builders Financial Services, Inc. shall implement all soil erosion control measures for the 13 lots that it owns in accordance with SESC permit BC 12-08 and the SESC control plan. The control measures implemented shall include all of the measures necessary to stabilize the entire earth disturbance on the 13 lots to cease the flow of soil and sediment or other pollutants to the waters of the state.

- 3.2 By no later than 30 days past entry of this Consent Order, Builders Financial Services, Inc. shall effectively reduce soil erosion and sedimentation from the 13 lots that it owns, upon which the earth change is occurring, by completing the stabilization of the 13 lots in accordance with the requirements of Section 9116 of Part 91. Builders Financial Services, Inc. shall stabilize the lots by installing all necessary temporary and permanent soil and sedimentation control measures on each of its 13 lots it owns, as defined in Section 1701 of the Part 17 Rules, 1979 AC R 323.1701 et seq., as amended, promulgated pursuant to Part 91. The entire parcel of land owned by Builders Financial Services, Inc., comprised of 13 individual lots, shall be considered permanently stabilized when the DEQ approves each one of the following phases in accordance with paragraph 3.3 of this Consent Order: permanent soil and sedimentation control measures have been installed; regular maintenance for the permanent controls is implemented; temporary soil erosion and sedimentation controls have been removed; and sufficient vegetation growth is established.

- 3.3 By no later than 45 days past entry of this ACO, Builders Financial Services, Inc. shall submit to the MDEQ at the address in paragraph 3.5 of this ACO a detailed summary of the temporary SESC measures that it has installed on the 13 lots that it owns. The detailed summary shall also contain complete description of the permanent SESC measures that it will install on each lot, in accordance with paragraph 3.2 of this ACO, before the lot is sold to a third-party for development,

- 3.4 Builders Financial Services, Inc. shall ensure that its certified storm water operator inspects the 13 lots that it owns once per week, and within 24 hours after every precipitation event that results in a discharge of storm water from the 13 lots; and shall ensure that its operator documents the inspections on a reporting form in accordance with

the requirements of Rule 2190 promulgated pursuant to Part 31. Builders Financial Services, Inc. shall ensure that it completes any needed corrective actions identified by the certified storm water operator, within one week of the operator's inspection. A log of the inspections and corrective actions shall be maintained on file by Builders Financial Services, Inc., and shall be submitted to the MDEQ once per month, due on the last day of the month, to the address in paragraph 3.5 of this Consent Order. The log and individual reports shall be retained by the Builders Financial Services, Inc. for a period of 3 years from the date of the inspection or corrective action.

- 3.5 Builders Financial Services, Inc. shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the district supervisor, WB, MDEQ, 503 North Euclid Avenue, Bay City, Michigan 48708. The cover letter with each submittal shall identify the specific paragraph and requirement of this ACO that the submittal is intended to satisfy.

IV. MDEQ APPROVAL OF SUBMITTALS

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this ACO to be submitted to the MDEQ by Builders Financial Services, Inc., the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this ACO shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this ACO.
- 4.3 In the event the MDEQ disapproves a work plan, proposal, or other document, it will notify Builders Financial Services, Inc., in writing, specifying the reasons for such disapproval. Builders Financial Services, Inc. shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document that adequately addresses the reasons for the MDEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify Builders Financial Services, Inc. of this disapproval.

- 4.4 In the event the MDEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Builders Financial Services, Inc., in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The MDEQ may require Builders Financial Services, Inc. to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document that adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify Builders Financial Services, Inc. of this disapproval.
- 4.5 Upon MDEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this ACO and shall be enforceable in accordance with the provisions of this ACO.
- 4.6 Failure by Builders Financial Services, Inc. to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this ACO and shall subject Builders Financial Services, Inc. to the enforcement provisions of this ACO.
- 4.7 Any delays caused by Builders Financial Services, Inc.'s failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter Builders Financial Services, Inc.'s responsibility to comply with any other deadline(s) specified in this ACO.
- 4.8 No informal advice, guidance, suggestions, or comments by the MDEQ regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by Builders Financial Services, Inc. will be construed as relieving Builders Financial Services, Inc. of its obligation to obtain written approval, if and when required by this ACO.

V. REPORTING

- 5.1 Builders Financial Services, Inc. shall verbally report any violation(s) of the terms and conditions of this ACO to the Saginaw Bay District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). Builders Financial Services, Inc. shall report any anticipated violation(s) of this ACO to the above-referenced individual in advance of the relevant deadlines whenever possible.

VI. RETENTION OF RECORDS

- 6.1 Upon request by an authorized representative of the MDEQ, Builders Financial Services, Inc. shall make available to the MDEQ all records, plans, logs, and other documents required to be maintained under this ACO or pursuant to Part 31, Part 91, or the rules promulgated under Part 31 and Part 91. All such documents shall be retained by Builders Financial Services, Inc. for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by Part 31, Part 91, or the rules promulgated under Part 31 and Part 91.

VII. RIGHT OF ENTRY

- 7.1 Builders Financial Services, Inc. shall allow any authorized representative or contractor of the MDEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this ACO. This paragraph in no way limits the authority of the MDEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

VIII. PENALTIES

- 8.1 Builders Financial Services, Inc. agrees to pay a civil fine of **\$1,000** to the State of Michigan for the violations specified in this ACO. Payment shall be made within 30 days of the effective date of this ACO in accordance with paragraph 8.2.
- 8.2 Builders Financial Services, Inc. agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this ACO must include the **Payment Identification Number WTR1080**.
- 8.3 Builders Financial Services, Inc. agrees not to contest the legality of the civil fine paid pursuant to paragraph 8.1, above.

IX. GENERAL PROVISIONS

- 9.1 With respect to any violations not specifically addressed and resolved by this ACO, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of Builders Financial Services, Inc. to comply with the requirements of the NREPA and its rules.
- 9.2 The MDEQ and Builders Financial Services, Inc. consent to enforcement of this ACO in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq.; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 et seq.
- 9.3 This ACO in no way affects Builders Financial Services, Inc.'s responsibility to comply with any other applicable state, federal, or local laws or regulations.

- 9.4 Nothing in this ACO is or shall be considered to affect any liability Builders Financial Services, Inc. may have for natural resource damages caused by Builders Financial Services, Inc.'s ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 9.5 The provisions of this ACO shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 9.6 This ACO constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

X. TERMINATION

- 10.1 This ACO shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the MDEQ. Prior to issuance of a written TN, Builders Financial Services, Inc. shall submit a request to the WB, Saginaw Bay District Office Supervisor consisting of a written certification that Builders Financial Services, Inc. has fully complied with the requirements of this ACO and has made payment of any fines required in this ACO. Specifically, this certification shall include:
- a. The date of compliance with each provision of the compliance program in Section II, and the date any fines or penalties were paid.
 - b. A statement that all required information has been reported to the district supervisor.
 - c. Confirmation that all records required to be maintained pursuant to this ACO are being maintained at the facility.

The MDEQ may also request additional relevant information. The MDEQ shall not unreasonably withhold issuance of a TN.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this ACO to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

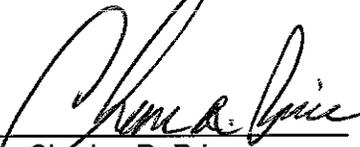
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



Frank J. Baldwin, Acting Chief
Water Bureau

8/27/08
Date

BUILDERS FINANCIAL SERVICES, INC.



By: Charles R. Price
Title: President

8/18/08
Date

APPROVED AS TO FORM:



By: Alan F. Hoffman, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

8/21/08
Date