



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 27 2010

CERTIFIED MAIL 7009 0960 0000 2366 0109
RETURN RECEIPT REQUESTED

Mr. Michael Harper
City of Lexington
General Manager, Public Utilities
54 Monroe Avenue
Lexington, Tennessee 38351

Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-4504(b)
Lexington Sewage Treatment Plant
NPDES Permit No. TN0024341

Dear Mr. Harper:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Mary Millner at (404) 562-9792.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

César A. Zapata, Acting Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Paul E. Davis
Tennessee Department of Environment
and Conservation

Internet Address (URL) • [http //www.epa.gov](http://www.epa.gov)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2010 APR 27 AM 9:02
EPA REGION 4
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HEAVY METALS
CLEM

IN THE MATTER OF:)
)
Lexington Sewage Treatment Plant) CONSENT AGREEMENT AND
Lexington, Tennessee,) FINAL ORDER
)
Respondent.) Docket No. CWA-04-2010-4504(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), codified at 40 Code of Federal Regulations ("C.F.R.") Part 22 ("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 re 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 EPA Region 4 ("Complainant").

II. Allegations

3. The City of Lexington, Tennessee ("Respondent") is a municipality under the laws of the state of Tennessee and is 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 Publicly Owned Treatment Works ("POTW"), called the Lexington Sewage Treatment Plant, located at 677 South Main Street in Henderson County, Tennessee.

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 EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. EPA has granted the State of Tennessee, through the Tennessee Department of Environment and Conservation ("TDEC"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. TDEC issued NPDES Permit No. TN0024341 ("Permit") to Respondent under authority of the Tennessee Water Quality Control Act of 1977 (T.C.A. 69-3-101 *et seq*) and the CWA. The Permit became effective on August 31, 2008 and will expire on August 31, 2013.

8. The Permit requires compliance with the effluent limits set forth in the Permit. In addition, the Permit requires that Respondent monitor its discharges and submit Discharge Monitoring Reports ("DMRs") to TDEC describing the results of the monitoring.

9. EPA alleges that Respondent has discharged pollutants in violation of effluent limitations established in Part I. Section A, of its Permit. The specific violations are as follows:

- A. pH, daily minimum, during the month April 2005;
- B. Total Residual Chlorine, daily maximum concentration, during the months December 2005; November – December 2006; October 2007; January - February, April, November – December 2008; and February 2009;
- C. Ammonia, monthly average concentration, during the month May 2006;
- D. E. coli during the months October 2006 and December 2008;
- E. Dissolved Oxygen, daily minimum concentration, during the months September 2007; January and October 2008.

10. Therefore, EPA alleges that because Respondent has failed to comply with the pH, Total Residual Chlorine, Ammonia, E. coli, and Dissolved Oxygen limits and requirements of the Permit, the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and the Permit, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342n.

III. Stipulations and Findings

11. 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.

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

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

14. 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.

15. By signing this CA/FO, 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. 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.

16. 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.

17. 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

18. 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 Nine Thousand Dollars (\$9,000) is an appropriate civil penalty to settle this action.

19. 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, MO 63197-9000.

20. 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, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency - Region 4
Water Management Division
Water Programs Enforcement Branch
Gulf Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

21. The penalty amount specified in Paragraph 14 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

22. 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

23. 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 the EPA

24. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of 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 agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

25. 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 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 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.

26. 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.

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

28. 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.

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

30. 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
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9523

For Respondent:

Michael Harper
General Manager
Lexington Water Systems
54 Monroe Avenue
Lexington, TN 38351
(731) 968-6657

31. 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.

32. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R.

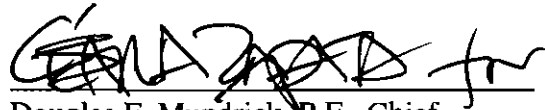
§ 22.38(b), Complainant represents that the State of Tennessee was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

33. 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:

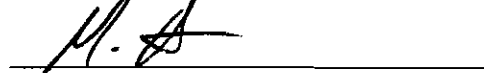


Douglas F. Mundrick, P.E., Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 2/26/10

For RESPONDENT:

Lexington, Tennessee



Michael Harper, General Manager
Lexington Water Systems

Date: 2-2-2010

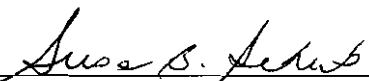
RESPONDENT

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*, FOR CLASS I insert: including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing 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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: April 22, 2010



Susan B. Schub
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 **Lexington, Tennessee**, Docket No. **CWA-04-2010-4504(b)** (filed with the Regional Hearing Clerk on APR 27 2010, 2010) was served on APR 27 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Mr. Wayne Lee
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**By certified mail,
return receipt requested:** Mr. Michael Harper
City of Lexington
General Manager, Public Utilities
54 Monroe Avenue
Lexington, Tennessee 38351

Mr. Paul E. Davis
Director, Water Pollution Control
Tennessee Department of Environment and Conservation
6th Floor, L&C Annex
401 Church Street
Nashville, Tennessee 37243



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 2/25/10
(Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: City of Lexington SIP, TN
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 9,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4504(b)

The Site Specific Superfund Account Number: _____

Water Protection Division

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|