



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

JUL 23 2013

CERTIFIED MAIL 7011 3500 0003 2064 0352  
RETURN RECEIPT REQUESTED

Mr. Lee Davis Thames, Jr.  
Attorney for the City of Vicksburg  
Post Office Box 150  
Vicksburg, Mississippi 39181

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2013-4509(b)  
National Pollutant Discharge Elimination System Permit No.: MS0022381  
City of Vicksburg, Mississippi

Dear Mr. Thames:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Sara Schiff at (404) 562-9870 or via email at [schiff.sara@epa.gov](mailto:schiff.sara@epa.gov). Legal inquiries should be directed to Mr. Matthew Hicks, Assistant Regional Counsel, at (404) 562-9670 or via email at [hicks.matthew@epa.gov](mailto:hicks.matthew@epa.gov).

Sincerely,

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Mr. Garnett Van Norman  
City of Vicksburg, Mississippi

Mr. Chris Sanders  
Mississippi Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:  
  
THE CITY OF VICKSBURG  
MISSISSIPPI

Respondent.

)  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
)  
)  
) Docket No.: CWA-04-2013-4509(b)  
)

HEARING CLERK

2013 JUL 23 PM 4:17

RECEIVED  
EPA REGION IV

**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 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. At all times relevant to this action, the City of Vicksburg, Mississippi ("Respondent"), was a municipality duly organized and existing under the laws of the State of Mississippi 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 the Vicksburg Publicly Owned Treatment Works ("POTW") located at 4430 Rifle Range Road, Vicksburg, Mississippi, including the Vicksburg Water Pollution Control Center ("WPCC") [a wastewater treatment plant] and its associated Wastewater Collection and Transmission System ("WCTS"), operating under National Pollutant Discharge Elimination System ("NPDES") permit number MS0022381 (the "Permit"). The Permit was issued to the Respondent by the State of Mississippi pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. The POTW discharges “pollutants” as a point source through a 42-inch gravity outfall pipe into the Mississippi River, a navigable water, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

6. The Permit became effective on December 20, 2007, and expired on November 30, 2012.

7. The Permit includes a requirement, Condition No. T-25, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, to properly operate and maintain the POTW, including the WCTS which transports wastewater to the WPCC.

8. On August 4, 2010, the EPA sent an Information Request Letter to Respondent pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a). This information request letter required Respondent to respond and give the EPA information regarding details on all Sanitary Sewer Overflows (“SSOs”) that have occurred from Respondent’s WCTS over the past five (5) years including the volume and cause of each SSO. For purposes of this Consent Agreement and Final Order (“CA/FO”), a SSO is defined as an overflow, spill, release, or diversion of wastewater from Respondent’s WCTS. SSOs include overflows or releases of wastewater that reach navigable waters; overflows or releases of wastewater that do not reach navigable waters; and wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned is not a SSO.

9. On August 16, 2012, the EPA conducted a Compliance Evaluation Inspection (CEI) of the WCTS to further evaluate Respondent’s compliance with its Permit and the CWA.

10. Based on its review of information obtained and observations made during its inspection, the EPA found that Respondent has had over 17 total SSOs, including SSOs that reached navigable waters and SSOs that did not reach navigable waters from September 7, 2007, to May 31, 2012. See Attachment A for a list of these SSOs.

11. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as 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 from a point source by any person into waters of the United States except as in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

12. EPA alleges that Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by experiencing SSOs of raw sewage from its WCTS into waters of the United States at point source locations not authorized by an NPDES permit and experiencing SSOs, including those that do not reach waters of the United States and building backups caused by flow

conditions in the Respondent's WCTS, that are the result of improper operation and maintenance in violation of Condition No. T-25 of the NPDES permit.

### **III. Stipulations and Findings**

13. 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 CA/FO will simultaneously commence and conclude this matter.

14. 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.

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

16. 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.

17. 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.

18. 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**

19. 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 seventeen thousand dollars (\$17,000) is an appropriate civil penalty to settle this action. Respondent consents to the assessment of and agrees to pay the civil penalty and consents to the other conditions set forth in this CA/FO.

20. 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

21. 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  
Atlanta Federal Center  
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  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

22. The penalty amount specified in Paragraph 19 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

23. 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**

24. 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.

25. 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.

26. 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.

27. 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.

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

29. 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.

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

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

For Complainant:

Matthew Hicks  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9670

For Respondent:

Lee Davis Thames, Jr.  
Attorney for the City of Vicksburg  
Post Office Box 150  
Vicksburg, Mississippi 39181-0150  
(601) 631-2983

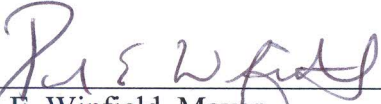
32. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

33. 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 Mississippi was provided a prior opportunity to consult with Complainant regarding this matter.

34. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

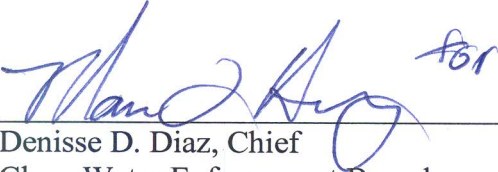
**AGREED AND CONSENTED TO:**

For RESPONDENT, CITY OF VICKSBURG:

  
\_\_\_\_\_  
Paul E. Winfield, Mayor  
The Mayor and Aldermen of the City of Vicksburg

Date: 5/28/13

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: 7/23/13



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

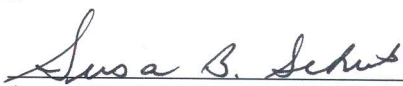
IN THE MATTER OF: )  
 )  
THE CITY OF VICKSBURG ) CONSENT AGREEMENT AND  
MISSISSIPPI ) FINAL ORDER  
 )  
 )  
Respondent. ) Docket No.: CWA-04-2013-4509(b)

**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*, 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: July 23, 2013

  
\_\_\_\_\_  
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 The City of Vicksburg, Mississippi, Docket No. CWA-04-2013-4509(b) (filed with the Regional Hearing Clerk on 7-23, 2013, was served on 7-13, 2013, in the manner specified to each of the persons listed below.

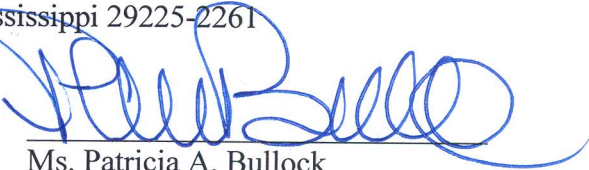
By hand-delivery:

Matthew Hicks  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested:

Lee Davis Thames, Jr.  
Attorney for the City of Vicksburg  
Post Office Box 150  
Vicksburg, Mississippi 39181-0150

Chris Sanders  
Director, Environmental Compliance & Enforcement Division  
Office of Pollution Control  
Mississippi Department of Environmental Quality  
Post Office Box 2261  
Jackson, Mississippi 29225-2261



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

**Attachment A**  
“City Sanitary Sewer Overflows”

| Date       | Approximate Location (Address)          | Source of SSO (Manhole, Pump Station, Main) | Destination Of Overflow (Stream, Land, House, etc.) | Estimated Volume of SSO (Gallons) | Cause of SSO              |
|------------|---|---|---|-----------------------------------|---------------------------|
| 5/31/2012  | Indiana Ave (Vicksburg Country Club)    | Unknown                                     | Unknown   | Unknown                           | Line break                |
| 5/23/2012  | 205 Lightcap Blvd                       | Manhole                                     | Stream  | 50                                | Grease                    |
| 3/30/2012  | 3585 Pemberton Square Blvd              | Manhole                                     | Mississippi River                                   | Unknown                           | Grease                    |
| 9/13/2011  | 4000 S Frontgate Rd                     | Manhole                                     | Mississippi River                                   | Unknown                           | Grease                    |
| 3/19/2011  | Hwy 61 S (airport)                      | Sewer                                       | Mississippi River                                   | Unknown                           | Line Break                |
| 8/26/2010  | 1303 Howard St                          | Sewer                                       | Mississippi River                                   | Unknown                           | Line Break                |
| 7/19/2010  | Hwy 61 N (Confederate Ridge Apartments) | Manhole                                     | Unknown   | Unknown                           | Grease                    |
| 6/7/2010   | Hwy 61 N (Confederate Ridge Apartments) | Manhole                                     | Mississippi River                                   | Unknown                           | Grease                    |
| 1/20/2010  | Rifle Range Rd                          | Treatment Plant                             | Unknown   | 1,800,000                         | I/I                       |
| 11/14/2009 | Bazisky Rd                              | Unknown                                     | Unknown   | Unknown                           | Line Break                |
| 11/12/2009 | Drummond St                             | Unknown                                     | Unknown   | Unknown                           | Line break (Hole in Line) |
| 10/21/2009 | Washington St                           | Sewer                                       | Mississippi River                                   | Unknown                           | Grease                    |
| 7/29/2009  | Rifle Range Rd                          | Treatment Plant                             | Unknown   | 1,500,000                         | I/I                       |
| 6/15/2009  | Indiana Ave (Vicksburg Country Club)    | Manhole                                     | Stouts Bayou to Mississippi River                   | Unknown                           | Grease                    |
| 11/7/2008  | Washington St                           | Manhole                                     | Stouts Bayou to Mississippi River                   | Unknown                           | Grease                    |
| 5/13/2008  | Landsdown Dr                            | Sewer                                       | Mississippi River                                   | Unknown                           | Line Break                |
| 9/7/2007   | Spring St                               | Manhole                                     | Unknown   | Unknown                           | Grease                    |

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 5/31/13
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
SF Judicial Order/Consent Decree. FMS COLLECTS.
Other Receivables
This is an original debt.
This is a modification.

PAYEE: City of Vicksburg, MS
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 17,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-4509 (b)

The Site-Specific Superfund (SF) Account Number:

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is:
If you have any questions call: in the Financial Management Section,
Telephone Number:

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/RH 1647, P.O. BOX 7611, Benjamin Franklin Station, Washington, DC 20044
2. Originating Office (ORC)
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 sent to:

- 1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk
4. Regional Counsel