



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

CERTIFIED MAIL 7005 1160 0004 1742 8918 **DEC 05 2006**
RETURN RECEIPT REQUESTED

Mr. Ken Reid
DeSoto County School District
5 East South Street
Hernando, MS 38632

SUBJ: Consent Agreement and Final Order
Docket No. CWA-04-2007-4503(b)
DeSoto East High School

Dear Mr. Reid:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order which has been finalized by the 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 Maurice Horsey at (404) 562-9764.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

cc: Mississippi Department of Environmental
Quality
DeSoto County

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
DeSoto County School District) CONSENT AGREEMENT AND
DeSoto East High School) FINAL ORDER
Olive Branch, Mississippi)
)
Respondent.) Docket No.: CWA 04-2007-4503(b)

RECEIVED
EPA REGION IV
2006 DEC -5 AM 8:11
HEARING CLERK

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) 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 ("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 Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, DeSoto County School District ("Respondent"), was a political subdivision 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 a construction site known as DeSoto East High School ("Facility") located on Lonney Road, in Olive Branch, Mississippi.

5. 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 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, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the State of Mississippi, through the Department of Environmental Quality ("MSDEQ"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The MSDEQ issued the *Storm Water Construction General Permit to Discharge Storm Water in Accordance with the National Pollutant Discharge Elimination System*, Permit No. MSR100000 on March 28, 2000, which expired on March 27, 2005. Subsequently, MSDEQ issued the *Large Construction Storm Water General Permit For Land Disturbing Activities of Five or More Acres to Discharge Storm Water in Accordance with the National Pollutant Discharge Elimination System*, Permit No. MSR100000 ("Permit") in accordance with the provisions of the Mississippi Water Pollution Control Law (Mississippi Code Ann. Sections 49-17-1 *et seq.*, and the regulations and standards adopted and promulgated thereunder) and the CWA. The Permit was effective June 10, 2005, with an expiration date of March 31, 2010. Coverage under the Permit is obtained by submitting a Large Construction Notice of Intent ("LCNOI") form at least thirty (30) days prior to the commencement of construction, or fifteen (15) days if a Storm Water Pollution Prevention Plan ("SWPPP") has previously been approved. Coverage under this Permit is also obtained if the applicant was previously covered under the expired Permit and wishes to be covered under the current Permit, by submitting a Recoverage Form to MSDEQ.

8. The Permit is a Mississippi statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, and excavation activities that result in land disturbance of five (5) acres or more or less than five (5) acres if part of a "larger common plan of development or sale."

9. On May 5, 2005, Respondent submitted a LCNOI requesting permit coverage to the MSDEQ. A Notice of Coverage was sent to the School District with an effective date of May 9, 2005, and an expiration date of March 21, 2006.

10. Section ACT6, Condition T-1 of the Permit requires the Permittee to develop and implement a SWPPP. The SWPPP must be prepared in accordance with sound engineering practices and shall identify potential sources of pollution, which may affect the quality of storm water discharges associated with construction activity. The SWPPP shall describe and ensure the implement of best management practices (“BMPs”) which will reduce pollutants in storm water discharges and assure compliance with the terms and conditions of the Permit.

11. Section ACT6, Condition T-2(2) of the Permit requires the Permittee to limit the exposure of disturbed areas to the shortest amount of time possible.

12. Section ACT6, Condition T-2(4) of the Permit requires the Permittee to implement BMPs to mitigate adverse impacts from storm water run-off.

13. Section ACT6, Condition T-2(5) of the Permit requires the Permittee to remove sediment that would contribute to or cause adverse impacts to waters from storm water before it leaves the site.

14. Section ACT6, Condition T-3(1) of the Permit requires the Permittee to provide appropriate temporary or permanent vegetative practices to disturbed areas that will be left undisturbed for thirty (30) days or more; in such case, vegetative practices shall be implemented within seven (7) calendar days.

15. Section ACT7, Condition S-1(7) of the Permit requires the Permittee to minimize off-site vehicle tracking of sediments.

16. Section ACT7, Condition S-2(9) of the Permit requires the Permittee to repair, replace, or supplement non-functioning controls with functional controls within twenty-four (24) hours of discovery or as soon as field conditions allow.

17. Section ACT8, Condition L-1 of the Permit requires the Permittee to ensure that storm water discharges shall be free from eroded soils and other materials that will settle to form objectionable deposits in receiving waters.

18. Section ACT11, Condition T-2 of the Permit requires the Permittee to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which is likely to adversely affect human health or the environment.

19. Section ACT12, Condition T-12 of the Permit requires the Permittee to 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 owner or operator to achieve compliance with the conditions of this Permit including the SWPPP.

20. On March 28, 2006, representatives of EPA in conjunction with DeSoto County performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at the Respondent's Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the MSDEQ Permit.

21. As a result of the CSWEI, EPA, Region 4 has determined that the Respondent discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

22. During the CSWEI, EPA inspectors observed the following:

A. The SWPPP reviewed did not include controls to minimize off-site vehicle tracking of sediments;

B. There was no silt fencing installed along the discharge ditches to prevent sediment from leaving the site;

C. Outlet protection for sedimentation basin no. 1 was not effective in preventing sediment from leaving the site; sediment had covered the outlet;

D. There were no BMPs in place along the sedimentation basin no. 1's banks and the slopes of the ditches creating large gullies which lead to erosion;

E. No slope stabilization was provided between the discharge outfalls and Monconnah Creek;

F. Sediment was observed in the stream near the outfall from sedimentation basin no. 1.

23. As a result of the CSWEI, EPA has determined that Respondent failed to comply with:

A. Section ACT6, Condition T-2(2) of the Permit for failing to limit the exposure of disturbed areas to the shortest amount of time possible.

B. Section ACT6, Condition T-2(4) of the Permit for failing to implement BMPs to mitigate adverse impacts from storm water run-off.

C. Section ACT6, Condition T-2(5) of the Permit for failing to remove sediment that contributed to or caused adverse impacts to waters from storm water before it left the site.

D. Section ACT6, Condition T-3(1) of the Permit for failing to provide appropriate temporary or permanent vegetation to disturbed areas that were left undisturbed for thirty (30) days or more within seven (7) calendar days.

E. Section ACT7, Condition S-1(7) of the Permit for failing to minimize off-site vehicle tracking of sediments.

F. Section ACT7, Condition S-2(9) of the Permit for failing to repair, replace, or supplement non-functioning controls with functional controls within twenty-four (24) hours of discovery or as soon as field conditions allowed.

G. Section ACT8, Condition L-1 of the Permit for failing to ensure that storm water discharges were free from eroded soils and other materials.

H. Section ACT11, Condition T-2 of the Permit for failing to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which would adversely affect human health or the environment.

I. Section ACT12, Condition T-12 of the Permit for failing to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the owner or operator to achieve compliance with the conditions of this Permit including the SWPPP.

24. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit.

III. Stipulations and Findings

25. 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.

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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

32. 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 twenty thousand dollars (\$20,000) is an appropriate civil penalty to settle this action.

33. 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
Cincinnati Operations Accounting
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

34. 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, GA 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, GA 30303-8960

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

36. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

37. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject 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

38. 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 EPA.

39. 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.

40. 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 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.

41. 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.

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

43. 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.

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

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

For Complainant:

Paul Schwartz
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9576

For Respondent:

Ken Reid
DeSoto County School District
5 East South Street
Hernando, MS 38632
(662) 429-5271

46. 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.

47. 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.

VI. Effective Date

48. 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
Water Programs Enforcement Branch
Water Management Division
U.S. EPA Region 4

Date: 10/27/06

For RESPONDENT:

DeSoto County School District:

By: 

Date: OCT 10, 2006

Title: ASSISTANT SUPERINTENDENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
DeSoto County School District) CONSENT AGREEMENT AND
DeSoto East High School) FINAL ORDER
Olive Branch, MS)
)
Respondent.) Docket No.: CWA 04-2007-4503(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 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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Dec. 4, 2006

Susan B. Schub
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 DeSoto County School District, DeSoto East High School, Docket No. CWA-04-2007-4503(b) (filed with the Regional Hearing Clerk on DEC 05 2006, 2006) was served on DEC 05 2006, 2006, in the manner specified to each of the persons listed below.

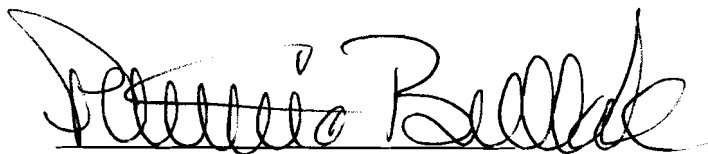
By hand-delivery:

Paul Schwartz
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

By certified mail,
return receipt requested:

Ken Reid
DeSoto County School District
5 East South Street
Hernando, MS 38632

Don Watts, Chief
Office of Pollution Control
Environmental Compliance and Enforcement Division
Mississippi Department of Environmental Quality
P.O. Box 10385
Jackson, MS 39289-0385



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 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 10/26/06
(Name) (Date)

in the WMD/WPEB/GES 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

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: _____
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 26,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: WMD-04-2007-4503(5)

The Site Specific Superfund Account Number: _____
WMD

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

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

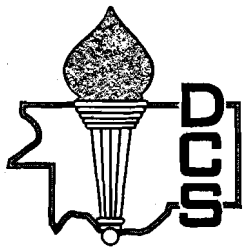
DISTRIBUTION:

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



DeSoto County Schools

Milton Kuykendall
SUPERINTENDENT OF EDUCATION

5 EAST SOUTH STREET
HERNANDO, MISSISSIPPI 38632
662-429-5271
662-895-3434
901-523-0139
FAX 662-429-4198

January 3, 2007

Regional Hearing Clerk
U.S. EPA-Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

RECEIVED
EPA REGION IV
2007 JAN -9 AM 6:50
HEARING CLERK

RE: EPA payment of fine
Docket # CWA-04-2007-4503(b)
\$20,000 DeSoto East High School

The copy of the check is attached. It was mailed overnight on January 3, 2007.

Respectfully,

Ken Reid

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE IN.

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE IN.

039322886

Issued by Integrated Payment Systems Inc.,
Englewood, Colorado
To Citibank, N.A., Buffalo, NY
January 03, 2007

10-85/220

BRANCH

21100



DATE

\$

*****20,000.00

PAY TO THE ORDER OF

Treasurer, United States of America

TWENTY THOUSAND DOLLARS AND ZERO CENTS

Corporate Offices
Tupelo, MS

NAME OF REMITTER

DeSoto County Schools

DRAWER: Renasant Bank

ADDRESS

Docket# CWA-04-2007-4503 (b)
DeSoto East High School

BY AUTHORIZED SIGNATURE

Sarah Keenum
Joyce Lowell

⑈ 257401⑈ ⑆ 022000868⑆ 68000393228864⑈

OFFICIAL CHECK

039322886

Issued by Integrated Payment Systems Inc.,
Englewood, Colorado
To Citibank, N.A., Buffalo, NY
January 03, 2007

10-85/220

BRANCH

21100



DATE

\$

*****20,000.00

Treasurer, United States of America

TWENTY THOUSAND DOLLARS AND ZERO CENTS

Corporate Offices
Tupelo, MS

DeSoto County Schools

Docket# CWA-04-2007-4503 (b)

Desoto East High School

DRAWER: Renasant Bank

CUSTOMER COPY
NON NEGOTIABLE