



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

JAN 14 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David Montgomery Moore, Esq.  
Troutman Sanders LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216

Dear Mr. Moore

Enclosed is the copy of the Consent Agreement and Final Order (CA/FO), Docket No.: CWA-04-2009-5129(b), for your client, the Waterworks Board of the City of Fort Payne. Your client's timely payment of the penalty as specified in the CA/FO resolves, as provided in said document, the violation of the Clean Water Act which EPA alleged occurred on or about April 1, 2008, when there was a discharge of approximately 200 pounds of sodium hypochlorite from your client's facility, the John Rains Water Treatment Plant, into Allen Branch.

If you have questions regarding the CA/FO, please contact me at (404) 562-9567.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Newton".

Michael T. Newton  
Associate Regional Counsel



2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of the John Rains Water Treatment Plant located at 153 20<sup>th</sup> Street NE, Fort Payne, Alabama 35967 ("the facility").

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Allen Branch is a navigable water as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and in 40 C.F.R. § 110.1 and is subject to the jurisdiction of Section 311 of the Act.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § § 1321(b)(3) and (b)(4), discharges of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or the environment of the United States are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding reportable quantities listed in 40 C.F.R. Part 117.

7. For the purposes of this Consent Agreement, Respondent admits to EPA's jurisdiction over the matters set out above, but neither admits nor denies the factual allegations or other legal conclusions set forth in this Agreement. Neither this Consent Agreement nor any part thereof, nor any entry into or performance under this Order, shall constitute or be construed as an admission or acknowledgment of liability in this proceeding or any subsequent legal action. This paragraph shall not in any way negate Respondent's admission of EPA's jurisdiction over the matters set out above to the full extent required under 40 C.F.R. Part 22.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On April 1, 2008, Respondent discharged approximately 200 pounds of sodium hypochlorite, which is designated as a hazardous substance in 40 C.F.R. Part 116, from its facility into or upon Allen Branch. The discharge was the result of an employee's failure to observe facility policies and requirements, and resulted in the employee's termination from employment.

9. Respondent's April 1, 2008, discharge of approximately 200 pounds of sodium hypochlorite was in excess of the reportable quantity of such substance established in 40 C.F.R. Part 117, which is 100 pounds, and, therefore, was in a quantity that has been determined may be harmful under Sections 311(b)(3) and (b)(4) of the Act.

10. Respondent's April 1, 2008, discharge of sodium hypochlorite into or upon Allen Branch in a quantity that has been determined may be harmful under 40 C.F.R. Part 117 violated Section 311(b)(3) of the Act.

### **Waiver of Rights**

11. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the jurisdictional allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

12. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

[The remainder of this page is Blank.]

13. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the Consent Agreement against any person not a party hereto.

**Penalty**

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$3,986.00**.

**Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

15. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$3,986.00 by means of a cashier's or certified check, or by online payment or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

US Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

[The remainder of this page is Blank.]

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and then open form and complete required fields.

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York :

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

16. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of a wire transfer, a copy of the wire transfer confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA- Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

[The remainder of this page is Blank.]

and to:

Frank Ney, Acting Chief  
South Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA- Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

17. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

18. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

19. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein. Except as otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.

[The remainder of this page is Blank.]

20. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

21. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Michael T. Newton,  
Associate Regional Counsel  
U.S. EPA – Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
404-562-9567

22. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

David Montgomery Moore, Esq.  
Troutman Sanders LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216  
404-885-3326

[The remainder of this Page is Blank]



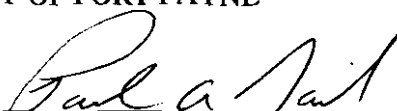
**Effective Date**

~~27~~<sup>3</sup>. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

**CONSENTED AND AGREED TO:**

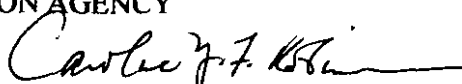
**WATERWORKS BOARD OF THE CITY OF FORT PAYNE**

Date: 12-17-08

  
Name: Paul A Nail  
Title: General Manager

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 1-5-09

  
Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Waterworks Board of the	)	FINAL ORDER
City of Fort Payne	)	UNDER 40 C.F.R. § 22.13(b)
153 20 <sup>th</sup> Street NE	)	
Fort Payne, AL 35967	)	
	)	Docket No.: CWA-04-2009-5129(b)
Respondent.	)	
	)	

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 14<sup>th</sup> day of January, 2009.

BY: Susan B. Schub  
Susan Schub  
Regional Judicial Officer

In the Matter of Waterworks Board of the City of Fort Payne  
Docket Number: CWA-04-2009-5129(b)

**CERTIFICATE OF SERVICE**

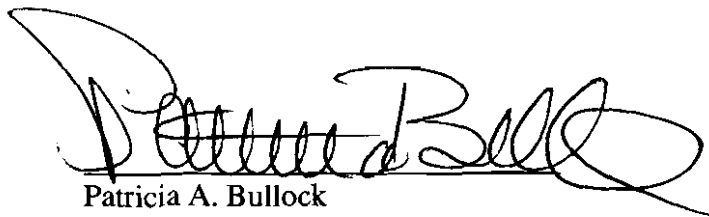
I hereby certify that on JAN 14 2009, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Waterworks Board of the City of Fort Payne, Docket Number: CWA-04-2009-5129(b), and that on JAN 14 2009, I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

**Via Certified Mail - Return Receipt Requested**

David Montgomery Moore, Esq.  
Troutman Sanders LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216

**Via EPA's internal mail**

Michael T. Newton  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511