



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 29 2014

CERTIFIED MAIL 7005 2570 0001 4886 9196
RETURN RECEIPT REQUESTED

Ms. Elizabeth B. Partlow
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
1320 Main Street, Suite 600
Columbia, South Carolina 29201-3266

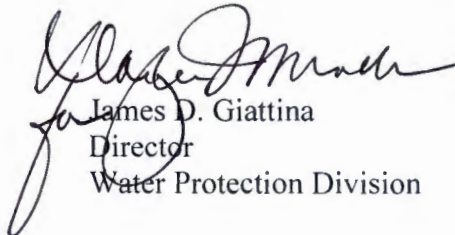
Re: Consent Agreement and Final Order
Docket No.: CWA-04-2014-4509(b)
National Pollutant Discharge Elimination System Permit Nos. AL0022195 and AL0024520
Anniston Water Works and Sewer Board

Dear Ms. Partlow:

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 Administrator. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Laurie Jones, of my staff, at (404) 562-9201. Legal inquiries should be directed to Mr. Matthew Hicks, Associate Regional Counsel, at (404) 562-9670.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: Ms. Glenda Dean
Alabama Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

ANNISTON WATER WORKS
AND SEWER BOARD

RESPONDENT.

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)
) Docket No.: CWA-04-2014-4509
)

HEARING CLERK

2014 SEP 29 AM 10: 31

RECEIVED
EPA REGION IV

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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*, 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 ("Complainant").

II. Allegations

3. 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 an National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. At all times relevant to this action, the Anniston Water Works and Sewer Board ("Respondent"), was a municipality and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

5. At all times relevant to this action, Respondent owned and/or operated two Publicly Owned Treatment Works ("POTWs"), including the Choccolocco Creek Wastewater Treatment Plant ("WWTP"), located at 35 Friendship Road, Oxford, Alabama, and the Fort McClellan WWTP, located at 6112 McClellan Boulevard, Anniston, Alabama, and their associated Wastewater Collection and Transmission Systems ("WCTs").

6. The State of Alabama, through the Alabama Department of Environmental Management (“ADEM”), issued NPDES Permit Numbers AL0022195 and AL0024520 (“the Permits”) to Respondent for the POTWs for the discharge of treated domestic/sanitary and commercial wastewaters into navigable waters subject to specific terms and conditions. The WWTPs discharge “pollutants” from a “point source” into Choccolocco Creek and Cane Creek, “navigable waters” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

7. NPDES Permit No. AL0022195 became effective on October 1, 2011, and expires on September 30, 2016. NPDES Permit No. AL0024520 became effective on December 1, 2011, and expires on November 30, 2016.

8. The Permits include a requirement, Condition II.A.1., to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of the Permits.

9. On October 23, 2012, the EPA sent an Information Request Letter, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to the Respondent requesting information related to Sanitary Sewer Overflows (“SSOs”), to evaluate the performance of the Choccolocco Creek WWTP and its associated WCTS, and to assess the Respondent’s compliance with its Permit and the CWA.

10. On November 18-19, 2013, the EPA and ADEM conducted a Compliance Evaluation Inspection (“CEI”) of the WCTSs to further evaluate Respondent’s compliance with the Permits and the CWA.

11. Based on its review of information obtained from the Information Request and/or observations made during its inspection, the EPA found that Respondent had experienced numerous SSOs from the WCTSs.

12. Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in that some of Respondent’s SSOs include discharges of untreated wastewater containing pollutants to navigable waters at point source locations not authorized by an NPDES permit.

13. Respondent has violated Condition II.A.1. of the Permits by failing to properly operate and maintain its WCTS resulting in SSOs that include discharges of untreated wastewater containing pollutants to navigable waters at point source locations not authorized by an NPDES permit and overflows of raw sewage that did not reach navigable waters including building backups caused by flow conditions in Respondent’s WCTS.

III. Stipulations and Findings

14. 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.

15. Solely for the purposes of this proceeding, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

17. 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.

18. The 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 the EPA.

19. 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

20. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that **THIRTY EIGHT THOUSAND AND FOUR HUNDRED DOLLARS (\$38,400)** 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.

21. 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

22. 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

23. The penalty amount specified in Paragraph 20 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal taxes.

24. 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

25. 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.

26. 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.

27. 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.

28. 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.

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

30. 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.

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

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

For Complainant:

Mr. 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:

Ms. Elizabeth B. Partlow
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
1320 Main Street, Suite 600
Columbia, South Carolina 29201-3266
(803) 252-1300

33. 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.

34. 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 Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

35. 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 the 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

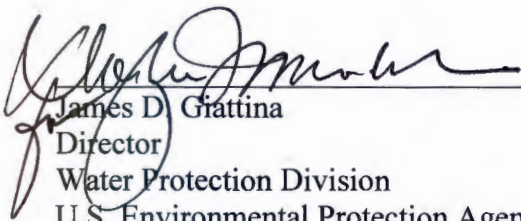
based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

36. 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:



James D. Giattina
Director
Water Protection Division
U.S. Environmental Protection Agency
Region 4

Date: 9/26/14

For RESPONDENT, ANNISTON WATER WORKS AND SEWER BOARD:



Mr. Edward A. Turner
General Manager
Anniston Water Works and Sewer Board

Date: 8-6-2014

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

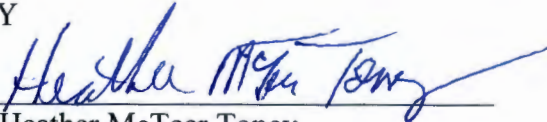
IN THE MATTER OF:)
ANNISTON WATER WORKS) **CONSENT AGREEMENT AND**
AND SEWER BOARD) **FINAL ORDER**
RESPONDENT.) **Docket No.: CWA-04-2014-4509(b)**

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*, 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: SEP 29 2014


Heather McTeer Toney
Regional Administrator
U.S. EPA, Region 4

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 Anniston Water Works and Sewer Board, Docket No. CWA-04-2014-4509(b) (filed with the Regional Hearing Clerk on 9-29, 2014) was served on 9-29, 2014, in the manner specified to each of the persons listed below.

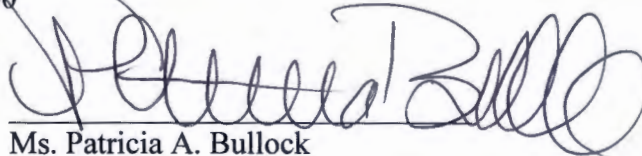
By hand-delivery:

Mr. 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

By certified mail,
return receipt requested:

Ms. Elizabeth B. Partlow
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
1320 Main Street, Suite 600
Columbia, South Carolina 29201-3266
(803) 252-1300

Ms. Glenda Dean, Chief
Water Programs Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700



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

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 8/19/14
[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: Anniston Water Works and Sewer Board, AL
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 38,400
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2014-4509(b)

The Site-Specific Superfund (SF) Account Number: _____

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

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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