



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OCT 17 2014

CERTIFIED MAIL 7005 2570 0001 4886 9202  
RETURN RECEIPT REQUESTED

Mr. William S. Cox III  
The Clark Building  
400 20th Street North  
Birmingham, Alabama 35203-3200

Re: Consent Agreement and Final Order  
Docket No.: CWA-04-2014-4510(b)  
National Pollutant Discharge Elimination System Permit Nos.: AL0048861 and AL0021156  
City of Alexander City, Alabama

Dear Mr. Cox:

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 Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Laurie Jones at (404) 562-9201. Legal inquiries should be directed to Ms. Wilda Cobb, Associate Regional Counsel, at (404) 562-9530.

Sincerely,

A handwritten signature in blue ink that reads "Denisse Diaz".

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

Enclosure

cc: Ms. Glenda Dean  
Alabama Department of Environmental Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION IV

2014 OCT 17 AM 7:13

HEARING CLERK

IN THE MATTER OF:	)	
	)	CONSENT AGREEMENT AND
THE CITY OF ALEXANDER CITY,	)	FINAL ORDER
ALABAMA	)	
	)	
RESPONDENT.	)	Docket No.: CWA-04-2014-4510(b)
	)	

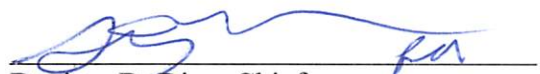
**CONSENT AGREEMENT MODIFICATION**

This Consent Agreement Paragraph 14 is modified to read: The EPA alleges that the Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging untreated wastewater containing pollutants to navigable waters at locations not authorized by an NPDES permit. The phrase "The AOC alleged that" has been deleted.

This Consent Agreement Paragraph 15 is modified to read: The EPA alleges that the Respondent violated Condition II.A.1. of the Permits by failing to properly operate and maintain its WCTs resulting in SSOs that included discharges of pollutants to navigable waters at point source locations not authorized by an NPDES permit. The phrase "The AOC further alleged that" has been deleted.

**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

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

Date: 10/14/14

**For RESPONDENT, CITY OF ALEXANDER CITY:**

Charles R. Shaw, Sr.

Honorable Charles R. Shaw, Sr.

Mayor

City of Alexander City, AL

Date: 10/16/14

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
THE CITY OF ALEXANDER CITY, ) CONSENT AGREEMENT AND  
ALABAMA ) FINAL ORDER  
 )  
RESPONDENT. ) Docket No.: CWA-04-2014-4510(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 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 the EPA Region 4 (“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 City of Alexander City (“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 two wastewater treatment plants (“WWTPs”), located at 2515 Sugar Creek Road, Alexander City, Alabama, and 2150 Coley Creek Road, Alexander City, Alabama, and their associated Wastewater Collection and Transmission Systems (“WCTSs”).

6. The State of Alabama, through the Alabama Department of Environmental Management (“ADEM”) issued NPDES Permit Numbers AL0048861 and AL0021156 (“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 are permitted to discharge “pollutants” from a “point source” into Sugar Creek, the Tallapoosa River (Lake Martin), and Coley Creek, “navigable waters” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

7. NPDES Permit No. AL0048861 became effective on October 1, 2011, and expires on September 30, 2016. NPDES Permit No. AL0021156 became effective on July 1, 2010, and expires on June 30, 2015.

8. The Permits include a requirement, Condition II.A.1., issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, 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 Permit.

9. On September 26, 2013, 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”), in order to evaluate the performance of the WWTPs and their associated WCTSs, and to assess the Respondent’s compliance with its Permits and the CWA.

10. The Respondent submitted a response to the EPA on October 29, 2013. Based on its review of the information in the Respondent’s response, the EPA found that the Respondent has had 193 total SSOs, including SSOs that reached navigable waters and SSOs that did not reach navigable waters, from June 2009 to September 2013.

11. The Respondent asserts that the response also included a description of the City’s program to address SSOs and that this program had been developed over the previous 4 years with a focus on using EPA’s Capacity, Management, Operations, and Maintenance (“CMOM”) Programs Guidance to formulate said program.

12. The EPA issued an Administrative Compliance Order on Consent (“AOC”), Docket No. CWA-04-2014-4762, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 319(a), alleging that the Respondent was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and its NPDES Permits.

13. The Respondent asserted in the AOC that the number of SSOs has been trending downward and that the number of SSOs that occurred in 2013/2014 is less than 40% of the number of SSOs that occurred in 2008/2009. The Respondent asserted that the downward trend in SSO events is a result of its implementation of multiple CMOM programs concentrated on reducing SSOs in the WCTS.

14. The AOC alleged that the Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging untreated wastewater containing pollutants to navigable waters at locations not authorized by an NPDES permit.

15. The AOC further alleged that Respondent violated Condition II.A.1. of the Permits by failing to properly operate and maintain its WCTSs resulting in SSOs that included discharges of pollutants to navigable waters at point source locations not authorized by an NPDES permit.

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

16. 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.

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

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

19. 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.

20. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the AOC 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.

21. 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**

22. 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 **TWENTY THREE THOUSAND AND TWO HUNDRED DOLLARS (\$23,200)** 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.

23. 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

24. 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

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

26. 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**

27. 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.

28. 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 CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

29. 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.

30. 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.

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

32. 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.

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

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

For Complainant:

Ms. Wilda Cobb  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

For Respondent:

Mr. William S. Cox III  
Attorney  
City of Alexander City  
The Clark Building  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203-3200  
(205) 581-0747



35. 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.

36. 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.

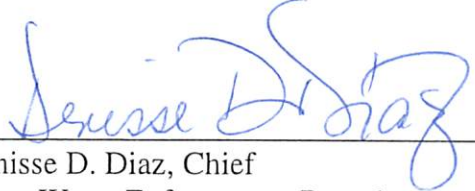
37. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations 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**

38. 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:**

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

Date: 9/29/14

**For RESPONDENT, CITY OF ALEXANDER CITY:**

  
\_\_\_\_\_  
Honorable Charles R. Shaw, Sr.  
Mayor  
City of Alexander City, AL

Date: 8/13/14

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4


IN THE MATTER OF: )  
 )  
THE CITY OF ALEXANDER CITY ) CONSENT AGREEMENT AND  
ALABAMA ) FINAL ORDER  
 )  
 )  
RESPONDENT. ) Docket No.: CWA-04-2014-4510(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: Oct. 16, 2014

  
\_\_\_\_\_  
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 Alexander City, Alabama, Docket No. CWA-04-2014-4510(b) (filed with the Regional Hearing Clerk on 10-17, 2014) was served on 10-17, 2014, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Wilda Cobb  
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) 562-9530

By certified mail,  
return receipt requested: Mr. William S. Cox III  
The Clark Building  
400 20<sup>th</sup> Street North  
Birmingham, Alabama 35203-3200  
(205) 581-0747

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