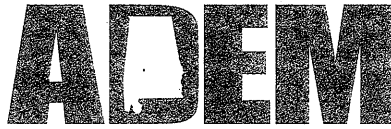


ONIS "TREY" GLENN, III  
DIRECTOR



Alabama Department of Environmental Management  
adem.alabama.gov  
1400 Coliseum Blvd. 36110-2059 Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

BOB RILEY  
GOVERNOR

September 19, 2007

**CERTIFIED MAIL #7005 1820 0003 1875 6719**  
**RETURN RECEIPT REQUESTED**

Mr. Jeff Taylor, Plant Superintendent  
Water & Wastewater Board of the City of Madison  
Post Office Box 197  
Madison, Alabama 35758

Re: Madison WWTP  
NPDES Permit No. AL0071897  
Madison County  
Consent Order No. 07-170-CWP



Dear Mr. Taylor:

Please find enclosed ADEM Consent Order No. 07-170-CWP which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of both the Madison Water and Wastewater Board and the Department. Please note that the assessed civil penalty is due within 45 days.

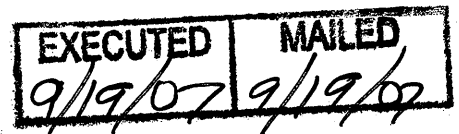
If you have any questions, please do not hesitate to contact Mr. James W. Grassiano at (334) 271-7801.

Sincerely,

James E. McIndoe, Chief  
Water Division

Enclosure

cc: Olivia Rowell, ADEM, Office of General Counsel  
Glenda Dean, ADEM Water Division  
ADEM – Public Affairs Office  
Cesar Zapata, EPA



Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (Fax)

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (Fax)

Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (Fax)

Mobile - Coastal  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Madison Water and Wastewater Board )

Madison Wastewater Treatment Plant )  
Madison (Madison County), AL )

NPDES Permit No. AL0071897 )

CONSENT ORDER NO. 07-170-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the Madison Water and Wastewater Board of the City of Madison (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Permittee operates a wastewater treatment facility known as the Madison Wastewater Treatment Plant (hereinafter "WWTP") located on 701 Landess Circle in the City of Madison, Madison County, Alabama. The WWTP discharges pollutants from a point source into the Tennessee River, a water of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. AL0071897 (hereinafter "Permit") to the Permittee on December 20, 2002, establishing limits on the discharge of pollutants into the Tennessee River from such point source, designated therein as outfall number 0011. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Tennessee River in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Department issued a warning letter to the Permittee in November 2004, addressing effluent limit violations specifically for the fecal coliform parameter. The violations occurred in May 2004, June 2004, and August 2004.

7. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on March 14, 2006, for continued fecal coliform violations, as well as for violating limits for Total Suspended Solids (hereinafter "TSS") and percent removal of TSS. Intermittent permit violations have continued since the issuance of the aforementioned NOV.

8. On May 10, 2006, the Permittee submitted a Municipal Water Pollution Prevention (hereinafter "MWPP") Annual Report which indicated three sanitary sewer overflows (hereinafter "SSOs") for the 2005 calendar year. One SSO was due to a malfunctioning lift station, reportedly the result of an unforeseeable electrical failure inside the panel. The second SSO was due to a power failure initiated by a storm event. The standby generator was used until the power was restored. The third overflow occurred at the wastewater treatment plant due to a valve failure at the return activated sludge drum screen. The Department has no record of a reported SSO event occurring in 2006. There was, however, a 24,000 gallon SSO event on March 18, 2007, that was reportedly the result of a power failure at a lift station. None of the Permittee-reported SSO events described herein indicate that the Permittee has a significant SSO concern within the collection system.

9. The Permittee has already initiated or completed certain efforts to reduce the possibility of inflow and infiltration (hereinafter "I/I") problems within its collection system. In 2006, it replaced 4500 ft of eight-inch clay lines and associated manholes. As

of June 30, 2007, the Permittee has reportedly replaced an additional 5600 feet of compromised sewer lines and manholes. The Permittee has reportedly budgeted for the following projects addressing the replacement of all sewer collection lines by fiscal year 2012 fiscal year: 11,000 ft total for 2007, 12,000 ft for 2008, and 12,000 to 15,000 ft for year for 2009 through 2012.

10. The Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

### ***CONTENTIONS***

12. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation,

provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The violations consisted of discharging effluent that did not achieve established daily maximum limits for fecal coliform. Violations also consisted of exceeding both the monthly and weekly average limits for TSS and the monthly average limit for percent removal of TSS.

B. THE STANDARD OF CARE: The Permittee failed to properly maintain its wastewater treatment and collection system to ensure compliance with permit limitations. However, the Department acknowledges that the Permittee has already initiated several significant actions intended to address I/I concerns.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been any economic benefit conferred by the delay of compliance with permit requirements.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any such efforts. There are no known environmental effects as a result of the violations addressed by this Order.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of violations over a considerable period of time. The Department issued a warning letter in November 2004 and an NOV on March 14, 2006, to the Permittee. These previous enforcement efforts have been unsuccessful at resolving these ongoing violations.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations cited herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$13,300.00 in settlement of the violations alleged herein within forty-five days from the effective date of this consent order. Failure to pay the civil penalty within forty-five days may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. That, alternatively, the Permittee may elect to perform a Supplemental Environmental Project (hereinafter "SEP") which has been approved by the Department

to offset a portion of the civil penalty referenced in Paragraph A above. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a ratio of \$1 for every \$3 spent on the SEP but in no event shall the penalty be offset below \$4,500. Should the Permittee elect to perform the SEP, the Permittee shall submit, within fifteen days of the effective date of this Consent Order, a written report describing the SEP project, including the SEP implementation schedule. The SEP project and implementation schedule may be implemented only if approved by the Department. Should the Permittee elect to perform the SEP project, if it is approved by the Department, then within forty-five days of the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty of \$4,500. Adequate documentation of all expenses related to the SEP shall be submitted to the Department for review and concurrence in determining the amount of the penalty to be offset no later than thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Routine operating costs (i.e., those costs which would normally be incurred by the Permittee absent the requirements of the SEP) and costs related to routine compliance requirements, including the costs of complying with the requirements of Paragraphs D through I below, shall not be considered for penalty offset. Should the Permittee not offset the full amount of the allowed penalty offset, then the remaining amount of the penalty required that is not offset shall be due and payable within thirty days of the Department's notifying the Permittee of the remaining amount of penalty due to be paid. If the SEP is implemented, the Permittee shall submit monthly status reports to the Department documenting the actual accomplishments and implementation costs.



C. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P. O. Box 301463  
Montgomery Alabama 36130-1463

D. The Permittee agrees to prepare and submit an Engineering Report to the Department, not later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan) that identifies the potential causes of noncompliance and that summarizes the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number AL0071897. At a minimum, the Engineering Report shall address each of the following: the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, the need for improvements or repairs to the collection system, and the need for new or additional treatment works or collection system components. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the NPDES permit, then the Permittee shall modify the Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted no later than thirty days after receipt of the Department's comments. The Permittee agrees to have completed implementation of the recommendations in the Engineering Report no later than 910 days after the effective date of this Consent Order.

E. The Permittee agrees to prepare and submit Semi-Annual Progress Reports to the Department describing in detail the Permittee's progress towards achieving compliance with items presented in the approved Compliance Plan beginning six months after the effective date of this Consent Order and continuing every six months thereafter that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, within than fourteen days of each applicable due date contained in this Consent Order, the Permittee must submit a written notice of compliance with the requirements stated herein. If compliance is not or will not be achieved by each applicable due date, then the Permittee must submit a Notice of Non-compliance within 14 days following each applicable due date outlined herein. Notice of Non-Compliance shall shall state the cause of noncompliance, the corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order.

F. The Permittee agrees to comply with fecal coliform limitations of the Permit no later than 490 days after the effective date of this Consent Order and shall continue to do so each and every day thereafter during the life of the Permit.

G. The Permittee agrees to comply with TSS and TSS percent removal limitations of the Permit no later than 910 days after the effective date of this Consent Order and shall continue to do so each and every day thereafter during the life of the Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of its NPDES Permit, including self monitoring and reporting requirements, immediately upon the effective date of this Consent Order.

H. The Permittee agrees that, after the effective date of this Consent Order for every violation of the following NPDES Permit effluent limitations: Fecal Coliform,

TSS, and percent removal of TSS, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0071897, the Permittee shall pay to the Department the sum of \$300 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$600 for each and every monthly average violation.

I. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, D, and E contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined as acts which occur beyond the Permittee's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs A, D, E, F, and G above, then the Department reserves the right to file a new action against the Permittee.

J. The parties agree that the cumulative stipulated penalties described in paragraphs H and I above shall under no circumstances exceed \$24,000.00. Once stipulated penalties of \$24,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after 910 days after the effective date of this Consent Order, then the Department shall be free to issue additional orders or file suit

against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance with the terms of this Consent Order.

K. The Permittee agrees that payment of stipulated penalties due for any violations stated herein shall be due not later than the 28<sup>th</sup> day of the month following the monitoring period in which there were violations. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

L. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

M. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

N. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

O. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined

as any event arising from causes that are not foreseeable and that are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes that could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds that the work was delayed because of conditions beyond the control and without the fault of the Permittee, then the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

P. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee

shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

Q. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

R. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

S. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

T. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

U. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

V. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be

construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MADISON WATER AND WW BOARD

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: Rick K. Pounds

By:

[Signature]

Its: General Manager

Its:

Director

Date: 7-24-2007

Date:

9-19-07

# Attachment 1

AL0071897 Madison Wastewater Treatment Facility

DMR Value Limit Units Averaging Time

Outfall ID: 0011

September, 2005

	<u>TSS</u>			
1	39.2	30	mg/l	Monthly Average
2	160.8	45	mg/l	Weekly Average
3	1499	1251	lbs/day	Monthly Average
4	6231	1876	lbs/day	Weekly Average

October, 2005

	<u>TSS</u>			
5	62.5	30	mg/l	Monthly Average
6	252.4	45	mg/l	Weekly Average
7	1302	1251	lbs/day	Monthly Average
8	5254	1876	lbs/day	Weekly Average

November, 2005

	<u>TSS</u>			
9	40.6	30	mg/l	Monthly Average
10	135.4	45	mg/l	Weekly Average
11	4257	1876	lbs/day	Weekly Average

January, 2006

	<u>SOLIDS SUSP PERCENT</u>			
12	83	85	Percent	Monthly Average
	<u>TSS</u>			
13	36.2	30	mg/l	Monthly Average
14	92.7	45	mg/l	Weekly Average
15	1898	1251	lbs/day	Monthly Average
16	6028	1876	lbs/day	Weekly Average

March, 2006

	<u>FECAL COLIFORM</u>			
17	2200	2000	#/100 ml	Daily Maximum

September, 2006

	<u>SOLIDS SUSP PERCENT</u>			
18	79	85	Percent	Monthly Average
	<u>TSS</u>			
19	41.5	30	mg/l	Monthly Average
20	77.2	45	mg/l	Weekly Average
21	1313	1251	lbs/day	Monthly Average
22	2288	1876	lbs/day	Weekly Average

November, 2006

	<u>FECAL COLIFORM</u>			
23	6000	2000	#/100 ml	Daily Maximum
	<u>SOLIDS SUSP PERCENT</u>			
24	81.5	85	Percent	Monthly Average
	<u>TSS</u>			
25	71.3	45	mg/l	Weekly Average
26	3265	1876	lbs/day	Weekly Average

December, 2006

	<u>SOLIDS SUSP PERCENT</u>			
27	82	85	Percent	Monthly Average
	<u>TSS</u>			
28	41.9	30	mg/l	Monthly Average
29	128.8	45	mg/l	Weekly Average
30	1392	1251	lbs/day	Monthly Average
31	4406	1876	lbs/day	Weekly Average

January, 2007

	<u>FECAL COLIFORM</u>			
32	4700	2000	#/100 ml	Daily Maximum
	<u>SOLIDS SUSP PERCENT</u>			
33	79.1	85	Percent	Monthly Average
	<u>TSS</u>			
34	39.2	30	mg/l	Monthly Average
35	58.4	45	mg/l	Weekly Average
36	2097	1251	lbs/day	Monthly Average
37	3235	1876	lbs/day	Weekly Average

February, 2007

	<u>FECAL COLIFORM</u>			
38	5800	2000	#/100 ml	Daily Maximum
39	183.7	37.5	mg/l	Weekly Average

March, 2007

	<u>TSS</u>			
40	111.7	45	mg/l	Weekly Average
41	3977	1876	lbs/day	Weekly Average