

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov  
1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

FEB - 6 2013

**CERTIFIED MAIL 91 7199 9991 7030 3430 4464**  
**RETURN RECEIPT REQUESTED**

Mr. Clarence Burke, Jr.  
President, Manager, Owner  
Baldwin County Sewer Service  
Post Office Box 1628  
Foley, Alabama 36536

RE: Unilateral Order No. 13-051-WP  
Baldwin County Sewer Service  
Baldwin County (003)

Dear Mr. Burke:

Please find the enclosed ADEM Unilateral Order No. 13-051-WP which requires you to take certain actions at the Baldwin County Sewer Service in Foley, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Unilateral Order has been issued without the consent of Baldwin County Sewer Service. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

A handwritten signature in black ink that reads "Glenda L. Dean". The signature is written in a cursive, flowing style.

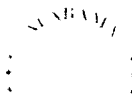
Glenda L. Dean, Chief  
Water Division

GLD/ea

File: EUO/13-051-WP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel  
James Wright/ADEM, Office of General Counsel  
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division  
Emily Anderson/ ADEM, Industrial Municipal Branch/Water Division



**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Baldwin County Sewer Service, LLC** )  
**Baldwin County, Alabama** )

UNILATERAL ORDER NO. 13-051-WP

***FINDINGS***

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act (hereinafter “FWPCA”), 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter “Department”) makes the following FINDINGS:

1. Baldwin County Sewer Service, LLC (hereinafter, “BCSS”) operates sanitary sewage collection systems in Baldwin County, Alabama. The low-pressure collection systems route the sanitary sewage to the BCSS wastewater treatment plants (hereinafter “WWTPs”). BCSS utilizes the following WWTPs and permitted outfall: Spanish Fort WWTP (National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit No. AL0042234), Summerdale WWTP (NPDES Permit No. AL0078565, permitted outfall), South Alabama Utility Service Inc WWTP (NPDES Permit No. AL0049859), and Lillian Sewer, LLC WWTP (Underground Injection Control Permit No. ALSI9902004).

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (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 FWPCA, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA Ala. Code §§ 22-22 and 22-23 (2006 Rplc. Vol.)

4. AWPCA Ala. Code §§ 22-23-47 states that no person shall deposit any dead animal or

fowl or any noxious, nauseous or poisonous substance or any human waste in any portion of a public water supply or in any private well, spring, reservoir, tank, vessel or receptacle appurtenant to a public or private water supply.

5. It was reported by the Belforest Water System (hereinafter "Belforest") that on June 21, 2012, a Belforest water meter was connected to a private residence on Rigsby Road and that the meter had a zero reading on June 26, 2012. Per Belforest, complaints regarding the taste, smell, and cloudiness of the public water supply on Rigsby Road were received on November 16, 2012, November 23, 2012, November 24, 2012, and November 28, 2012.

6. According to information provided by BCSS: BCSS connected the sanitary sewer pipe to the public water supply pipe on September 10, 2012; the grinder pump installed on September 10, 2012 was installed in disabled mode; power was not available to the pump at the time of installation; the grinder pump was not connected to the private residence; the grinder pump was activated by the builder approximately three weeks prior to November 30, 2012; water was first used in the residence on November 16, 2012 and again on November 19, 2012, in preparation for sale of the home; the home was occupied by the new owner on November 21, 2012.

7. Correspondence via email between BCSS, the electrician, and the plumber was provided to the Department on November 12, 2012. Per the correspondence, the electrician has indicated that electricity was supplied to the grinder pump on November 3, 2012. Also, the plumber has indicated that the grinder pump was connected to the private residence after electricity was supplied to the grinder pump and that water was used by the plumber on November 5, 2012 to test the plumbing fixtures.

8. Correspondence via letter between BCSS and the builder was also provided to the Department on November 12, 2012. Per the correspondence, the builder has indicated that the private residence was locked and no one was allowed into the house except for the painters. The painters were allowed into the house on November 12 and 15, 2012. The builder also indicated that a porta-let was on-site for the painters to use and that all paint cleanup was to be done outside at hose bibs.

9. Based on all the above information provided to the Department, it was determined that as of November 5, 2012, there was a potential for human waste to enter the public water supply system.

10. On November 28, 2012, the Department was notified, by Belforest, of a private lateral sanitary sewer connection on Rigsby Road to a Belforest public water system supply pipe. Samples collected on November 28, 2012, from a complainant's private residence on Rigsby Road tested positive for *Escherichia coli* (E. coli) and fecal coliform. The E. coli and fecal coliform Drinking Water Bacteria Report is included in Attachment I.

11. On November 28, 2012, BCSS confirmed, to the Department, the connection of the sanitary sewer pipe to the Belforest public water supply pipe.

12. As a result of the BCSS sanitary sewer pipe connection to the Belforest public water supply pipe, on November 28, 2012, a "Boil Water Notice" was issued until further notice for all Belforest customers; two schools and several area businesses were closed beginning on November 29, 2012; and Belforest was required by the Department to flush the public water supply pipes and collect additional bacteriological samples for analysis.

13. On December 11, 2012, the Department received a report that a resident in the area of the cross-connection began suffering from E. coli poisoning after the cross-connection was made.

14. The Department issued Consent Order No. 07-080-CWP to BCSS on February 28, 2007. The Consent Order addressed a July 13, 2005 private lateral sanitary sewer connection made by BCSS to a City of Fairhope Water System water supply system pipe.

15. Consent Order No. 07-080-CWP required the payment of a \$100,000 civil penalty, establishment of a training program for installation and/or connection of sanitary sewer service, and certification that blue piping had not been used for sewer lines in any location other than the location that was the subject of the Consent Order.

16. 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 such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed Twenty Five Thousand Dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Each day that 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: Based on the information available to the Department, violations of the AWPCA Ala. Code §§ 22-23-47 were noted. Considering the general nature of the violations, the magnitude and duration of the violations, the characteristics of the pollutants of concern, their effects, if any, on the public water supply, and any available evidence of irreparable harm to the environment or threat to public, the Department determined the base penalty to be \$345,000.00.

B. THE STANDARD OF CARE: BCSS failed to effectively train BCSS personnel on installation and/or connection of sanitary sewer service as required by Consent Order No. 07-080-CWP, and failed to implement adequate measures to prevent the potential for cross-connections including the prevention of third parties from activating grinder pumps without BCSS knowledge. In consideration of the standard of care provided by BCSS, the Department enhanced the penalty by an additional \$115,000.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department does not believe that there has been a significant economic benefit associated with the violations cited above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts to minimize or mitigate the effects of the violations upon the environment. BCSS has indicated that, upon notice of the cross-connection, they immediately responded and assisted Belforest in making the necessary

corrections to the cross-connection and, for three days until the Boil Water Notice was lifted, distributed 45,992 bottles of water to all residences in the immediate affected areas and to anyone who requested bottled water from the field crews. BCSS has also indicated that their Field Operations Crews assisted Belforest in delivering the Boil Water Notices. The penalty has not been adjusted based upon the above actions.

E. HISTORY OF PREVIOUS VIOLATIONS: Consent Order No. 07-080-CWP cited a previous private lateral sanitary sewer connection to a water supply system pipe and required corrective actions that included measures to safeguard public water supplies from cross-connections. In consideration of the history of previous violations the Department enhanced the penalty by an additional \$115,000.00.

F. THE ABILITY TO PAY: BCSS has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The maximum penalty the Department is allowed to assess shall not exceed \$250,000.00. The penalty was therefore adjusted accordingly. The civil penalty is summarized in Attachment II.

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days from the date of issuance of this Order, BCSS shall pay to the Department a civil penalty in the amount of \$250,000.00 for the violations cited herein.

B. That all penalties due pursuant to this 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

C. That BCSS shall prepare and submit to the Department an Engineering Report that includes corrective actions taken to prevent the reoccurrence of sanitary sewer lines being

connected to public water supply systems and the process by which BCSS will coordinate with local water supplies prior to the installation, replacement, and/or connection of any sanitary sewer service. The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama and must be submitted so that it is received by the Department no later than 30 days after the date of issuance of this Order. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then BCSS must modify the Engineering Report. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than fourteen days after receipt of the Department's comments.

D. That BCSS shall prepare and submit to the Department a standard operating procedure (hereinafter "SOP") manual that includes at a minimum an updated training program for BCSS personnel responsible for the installation, replacement, and/or connection of sanitary sewer service; instructions for BCSS personnel to be able to utilize a reference that includes the location of all known BCSS sanitary sewer pipes, and a description of each pipe as known as of the issuance date of this Order (color, size, etc.), ; the process by which all BCSS sanitary sewer pipes will be distinguishable from all other pipes that could be encountered when installing, replacing, and/or connecting sanitary sewer service. The SOP must also include a procedure by which at least two parties verify proper connection when installing, replacing, and/or connecting sanitary sewer service. The reference information required by this paragraph should be updated to include any new or existing pipes as they are installed, replaced, connected, and/or identified. The verification procedure must also include a timeframe for verification. The SOP and reference information required by this paragraph must be updated as necessary and made available upon request by the Department. The SOP must be submitted so that it is received by the Department no later than 90 days after the date of issuance of this Order.

E. That until the method of dual verification of proper connection of sanitary sewer pipes is in place as required in the SOP manual, a BCSS supervisor must approve, by signing off,

that proper connection has been made within one business day of the installation, replacement, and/or connection of BCSS sanitary sewer pipes.

F. That BCSS shall update the SOP as necessary so that no future cross-connections occur. Also, BCSS shall retain records of all coordination with local water supplies prior to the installation, replacement, and/or connection of any sanitary sewer service; all BCSS personnel training on the installation, replacement, and/or connection of sanitary sewer service; updated locations of all BCSS sanitary sewer pipes and a descriptions of each pipe; and records of all dual verifications of proper connections of sanitary sewer pipes when installing, replacing, and/or connecting sanitary sewer service.

G. That, effective immediately, BCSS shall not connect sanitary sewer pipes to public water supply pipes.

H. That BCSS shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether or not BCSS is in compliance with all requirements of this Order. The certification will be submitted not later than 120 days after the date of issuance of this Order.

I. That this Order shall not affect BCSS's obligation to comply with any Federal, State, or local laws or regulations.

J. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

K. That, should any provision of this 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.

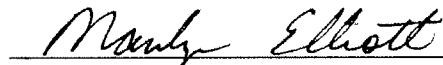
L. That, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve BCSS of its obligations to comply in the future with any permit.



M. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against BCSS for the violations cited herein.

N. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against BCSS for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 6<sup>th</sup> day of February, 2013.



Lance R. LeFleur

Director

Alabama Department of Environmental Management

1400 Coliseum Boulevard

Montgomery, AL 36110-2059

(334) 271-7700

Cell phone 709-0176

Client: <u>Belforest Water</u>
Address: <u>P.O. Box 125</u>
City/ST/Zip: <u>Daphne AL 36526</u>
Phone: <u>(251) 626-5354</u> Fax: <u>251-626-5340</u>
email:

Lab ID No. 40810



4320 Midmost Drive Mobile, AL 36609  
Phone (251) 344-9106 Fax (251) 341-9492

Analyst	Date Analyzed	Time Analyzed
<u>DEP</u>	<u>11/28/12</u>	<u>1500</u>

<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>5</u>
PWS ID NUMBER						

<u>Belforest</u>
Water System

### Drinking Water Bacteria Report

Lab No.: <u>12K0440</u>			Distribution	Special	Repeat	Chlorine mg/L	Date Sampled	Time Sampled	P/A Coliform Test* Coli-ert					Membrane Filtration SM 9222B or 9222D			
#	Collection Points	CA							CP	EA	EP	Un	Total	fecal	Col/100 ml		
1	<u>28093 Rigsby Rd</u>		<input checked="" type="checkbox"/>			<u>1.5</u>	<u>11/28/12</u>	<u>11:00</u>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>						
2																	
3																	
4																	
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21																	
22	Raw																
23	Raw																
24	Raw																
25	Raw																

\*P/A Result Code: CA - Coliform Absent CP - Coliform Present EA - E Coli Absent EP - E Coli Present Un - Unsatisfactory see below

Samples may be unsatisfactory for the following reasons (enter appropriate letter designation for unsatisfactory sample in the "Un" column):

A - Samples over 30 hours old  
B - Leaked in transit  
C - Chlorine present

E - Bottles expired  
H - Samples received on non-scheduled test day  
I - Incomplete or incorrect information

L - Laboratory accident  
U - Unapproved sample bottle  
Z - Other

1. Sampled/Relinquished by: <u>Don Milled</u>	Date: <u>11/28/12</u>	3. Relinquished by:	Date:
Company:	Time:	Company:	Time:
2. Received by: <u>Jerry Wheat</u>	Date: <u>11/28/12</u>	4. Received by:	Date:
Company:	Time: <u>1246</u>	Company:	Time:

F0302 02

**Baldwin County Sewer Service  
Attachment II  
Penalty Synopsis Worksheet**

<b>Violation</b>	<b>Number of Violations</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Deposition of Human Waste to the Public Water Supply	23	\$345,000.00	\$115,000.00	\$115,000.00
<b>Totals:</b>	23	\$345,000.00	\$115,000.00	\$115,000.00
<b>Economic Benefit*:</b>				<b>\$0.00</b>
<b>Mitigating Factors:</b>				<b>\$0.00</b>
<b>Ability to Pay*:</b>				<b>\$0.00</b>
<b>Other Factors*:</b>				<b>(\$325,000.00)</b>
<b>Final Penalty:</b>				<b>\$250,000.00</b>

The Maximum Penalty the Department is allowed to assess shall not exceed \$250,000.

\* Refer to the "Findings" of the Order for a description of each penalty factor

**ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE**

I, Glenda L. Dean, do hereby certify that I have served the executed Administrative Order Number 13-051-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt # 91 7199 9991 7030 3430 4464, with instructions to forward and return receipt to:

Mr. Clarence Burke, Jr.  
President, Manager, Owner  
Baldwin County Sewer Service  
Post Office Box 1628  
Foley, Alabama 36536  
Baldwin County (003)

Done this 6th day of February, 2013

Glenda L. Dean  
Glenda L. Dean, Chief  
Water Division  
Alabama Department of Environmental Management

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