

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )  
)  
)

CITY OF TALLADEGA WATER & )  
SEWER BOARD )  
)

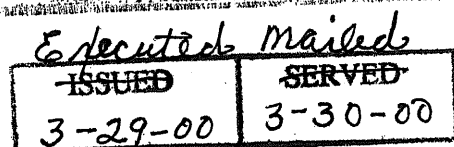
NPDES PERMIT NO. AL0022349 )  
TALLADEGA BRECON )  
WASTEWATER )  
TREATMENT PLANT )  
TALLADEGA ALABAMA )  
)

CONSENT ORDER NO. 00-098-CWP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342 and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. The City of Talladega Water & Sewer Board (hereinafter, "the Permittee") operates a waste treatment facility known as the Talladega Brecon Wastewater Treatment Plant which discharges pollutants from a point source into Brecon Branch, a water of the State.



2. The Department issued NPDES Permit Number AL0022349 to the Permittee on January 19, 1995, which established limitations on the discharge of pollutants from a point source. designated therein as outfall number 001, to Brecon Branch, a water of the State classified as fish and wildlife.

3. NPDES Permit Number AL0022349, Part II, E.1.a. requires the Permittee to file a complete permit application for reissuance of the permit at least 180 days prior to its expiration if the Permittee intends to discharge beyond the expiration date of the Permit.

4. As set forth in ADEM Admin Code R. 335-6-6-.06, the terms and conditions of an expiring NPDES Permit are automatically extended pending issuance of a new permit if the Permittee has submitted a timely and complete application for reissuance of an NPDES Permit and the delay in permit issuance has not been caused by the actions of the Permittee.

5. NPDES Permit Number AL0022349 Part II, E.1.b. states that, "Failure of the Permittee to apply for reissuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Admin Code R. 335-6-6-.06, and, should the permit not be reissued for any reason, any discharge after expiration of this permit will be an unpermitted discharge".

6. The Department did not receive a permit application from the Permittee 180 days prior to January 31, 2000, the expiration date of the permit. A permit application was received on February 23, 2000.

7. The Department was not given any opportunity to reissue NPDES Permit Number AL0022349 prior to its expiration date January 31, 2000, thereby resulting in unpermitted discharges by the Permittee.

8. Since January 31, 2000, the expiration date of the permit, the Permittee has fully complied with all pollutant discharge limitations in NPDES Permit Number AL0022349.

9. The Permittee has the ability to pay the civil penalty assessed herein.

10. The Permittee agrees with the Findings presented in this Consent Order, and, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Permittee has consented to the terms of this Order.

11. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-22-9(l), and 22-22-9(k), as amended, and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, and with the consent of the Permittee, it is hereby ORDERED:

A. That, within 30 days from the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) for the violations stated herein.

B. That, commencing immediately after the effective date of this Consent Order, the Permittee shall comply with all the monitoring and reporting provisions of NPDES Permit Number AL0022349 and all other limitations, terms and conditions of NPDES Permit Number AL0022349 to the extent not inconsistent with this Order and shall continue to comply with said monitoring and reporting provisions each and everyday thereafter until the reissuance of the permit by the Department.

C. 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 the 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.

D. 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 which are cited in this Consent Order.

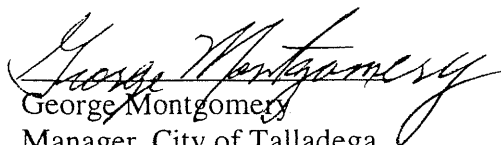
E. That the Permittee is not relieved from any liability if it fails to comply with any provisions of this Consent Order.

F. That, for purposes of this Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including , but not limited to, Montgomery County Circuit Court. 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.

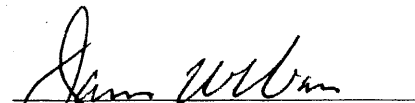
G. "Force Majeure" for the purposes of this Consent Order is defined as an event arising from causes beyond the control of the Permittee, or of any entity employed by the Permittee, including its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Order.

H. That, this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the Permittee, which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders as may be issued by the Department, 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.

I. That, by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Respondent does hereby waive any hearing on the terms and conditions of same.

  
George Montgomery  
Manager, City of Talladega  
Water & Sewer Board

3/2/2000  
Date

  
James W. Warr, Director  
Alabama Department of  
Environmental Management

29 Mar 2000  
Date