

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

April 16, 2009

CERTIFIED MAIL: 91 7108 2133 3936 3602 6029
RETURN RECEIPT REQUESTED

James Markham
Chairman
Winfield Water Works & Sewer Board
P O Box 1740
Winfield, Alabama 35594



RE: Consent Order No. 09-071-CWP
NPDES Permit No. AL0023400
Winfield WWTP
Marion County (093)

Dear Mr. Markham:

Please find enclosed ADEM Consent Order 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 the Winfield Water Works & Sewer Board and the Department.

If you have questions regarding this matter, please contact Catherine McNeill at 334-271-7848.

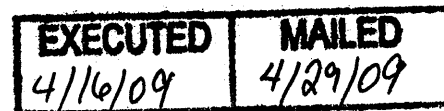
Sincerely,

James E. McIndoe, Chief
Water Division

Enclosure: Consent Order

File: ECO/13705

cc: James H. Carlson, ADEM - Water Division
Vernon H. Crockett, ADEM - Water Division
Olivia H. Rowell, Office of General Counsel
ADEM - Public Affairs Office
Cesar Zapata, US EPA Region IV
Catherine McNeill ADEM - Water Division



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:)

Winfield Water Works & Sewer Board)

Winfield WWTP)

Winfield, Marion County, Alabama)

NPDES Permit No. AL0023400)

Consent Order No. 09-071-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Winfield Water Works & Sewer Board (hereinafter the "Permittee") 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, Ala. Code §§ 22-22-1 to 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 Winfield WWTP located on 440 Industrial Drive in Winfield, Marion County, Alabama. The wastewater treatment facility discharges pollutants from a point source into Luxapallila Creek (East Branch), 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 to 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 to 22-22-14 (2006 Rplc. Vol.).

4. On August 22, 2006, the Department issued the Permittee's National Pollutant Discharge Elimination System Permit Number AL0023400 (hereinafter "the Permit"), establishing limitations on the discharge of pollutants from such point source, designated therein as outfall number 001-1, into Luxapallila Creek. 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. On August 27, 2007, the Department issued Administrative Order (hereinafter "AO") Number 07-158-WP to the Permittee, requiring that the Permittee take certain actions to address alleged violations of the Alabama Water Pollution Control Act. The violations consisted of exceeding the limits established in the Permit and the submittal of an incomplete DMR. The AO imposed a compliance schedule of 365 days after the Permittee's receipt of the AO to resolve the discharge limit violations.

6. The AO issued by the Department on August 27, 2007, has been unsuccessful at resolving the Permit discharge limit violations. Since September 2008 (the compliance month established in the AO), the DMRs submitted to the Department by the Permittee indicate that the Permittee has continued to discharge pollutants from Outfall 001-1 into the aforementioned Luxapallila Creek in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed below.

Month	Parameter	Reported Value	Permitted Limit	Averaging Time
Sep 2008	Ammonia - Nitrogen	13.0 mg/L	5.9 mg/L	Monthly Average
Sep 2008	Ammonia - Nitrogen	14.2 mg/L	8.8 mg/L	Weekly Average
Sep 2008	Total Residual Chlorine	0.42 mg/L	0.03 mg/L	Daily Maximum
Oct 2008	Dissolved Oxygen	5.9 mg/L	6.0 mg/L	Daily Maximum
Oct 2008	pH	5.63 s.u.	6.0 s.u.	Daily Maximum
Oct 2008	Ammonia - Nitrogen	9.18 mg/L	5.9 mg/L	Monthly Average
Oct 2008	Ammonia - Nitrogen	12.8 mg/L	8.8 mg/L	Weekly Average

Oct 2008	Total Residual Chlorine	0.10 mg/L	0.03 mg/L	Daily Maximum
Nov 2008	Ammonia - Nitrogen	12.0 mg/L	5.9 mg/L	Monthly Average
Nov 2008	Ammonia - Nitrogen	19.2 mg/L	8.8 mg/L	Weekly Average
Nov 2008	Total Residual Chlorine	0.21 mg/L	0.03 mg/L	Daily Maximum
Dec 2008	Total Residual Chlorine	0.04 mg/L	0.03 mg/L	Daily Maximum

7. The Permittee consents to abide by the terms of the following Consent Order.

8. 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 above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

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, 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 submit an Engineering Report to the Department that identifies the potential causes of noncompliance and that summarizes an investigation of the changes necessary for the Permittee to implement to achieve compliance with the Permit. The Engineering Report shall be submitted so that it is received by the Department not later than thirty days after the effective date of this Consent Order. At a minimum, the Permittee shall consider each of the following in making its determination: the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and collection system works, and the need for new or additional treatment and collection system works. 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 report is not sufficient to accomplish compliance with the Permit, then the report shall be modified so that it does accomplish compliance. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations made in the Engineering Report no later than July 1, 2009.

B. No later than July 1, 2009, the Permittee agrees to comply with the Ammonia-Nitrogen, Total Residual Chlorine, Dissolved Oxygen, and pH limitations of Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of its Permit immediately upon the effective date of this Consent Order.

C. 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 satisfy any of the requirements set forth in or established by paragraphs A and B contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, 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 and B, the Department reserves the right to file a new action against the Defendant.

D. The parties agree that the cumulative stipulated penalties described in paragraph C above shall under no circumstances exceed \$24,000. Once stipulated penalties of \$24,000 are due to the Department and violations continue to occur, or, should violations continue to occur after July 1, 2009, 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 of this Consent Order.

E. The Permittee agrees to submit to the Department payment of stipulated penalties due for failure to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A and B contained herein. Furthermore, the Permittee agrees to submit payment of stipulated penalties to the Department so that it is received by the Department not later than 30 days following the completion of the milestone or requirement. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

F. The Permittee agrees that all stipulated 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

G. 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.

H. 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 which are cited in this Consent Order.

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

J. 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 are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which 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 the work was delayed because of conditions beyond the control and without the fault of the Permittee, 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.

K. 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.

L. 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.

M. 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.

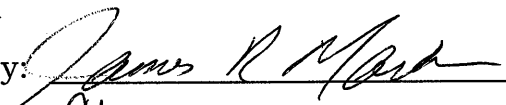
N. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain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

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

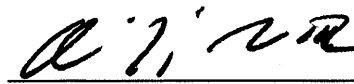
P. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations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

Executed in duplicate, with each part being an original.

WINFIELD WATER
WORKS & SEWER BOARD

By: 
Its: Chairman
Date: 4/1/09

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 
Its: Director
Date: 4/16/09

CERTIFICATE OF SERVICE

I, Ashlee Nichols, hereby certify that I have this date served
the foregoing Administrative Order on _____ by
regular United States Mail, properly addressed and postage prepaid to:

James Markham, Chairman

Winfield Water Works & Sewer Board

P O Box 1740

Winfield, AL 35594

Done this 29th day of April,
2009.

Ashlee Nichols
Name