

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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December 5, 2012

CERTIFIED MAIL 91 7108 2133 3935 0353 8983
RETURN RECEIPT REQUESTED

Mr. Michael Hilyer
Public Works Director
City of Opelika
Post Office Box 390
Opelika, Alabama 36801

RE: Consent Order No. 13-025-CWP
NPDES Permit AL0059218
Opelika Eastside WWTP
Lee County (081)

Dear Mr. Hilyer:

Please find the enclosed ADEM Consent Order No. 13-025-CWP which requires you to take certain actions at the Opelika Eastside WWTP in Opelika, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the City of Opelika/Opelika Eastside WWTP. 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/st

File: ECO/13-025-CWP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel
Laura T. Eubank/ADEM, Office of General Counsel
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division
Scott Ramsey/ADEM, Industrial Municipal Branch/Water Division
Shanda Torbert/ADEM, Industrial Municipal Branch/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
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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:)

City of Opelika)

Opelika Eastside WWTP)

Opelika, Lee County, Alabama)

NPDES PERMIT NO. AL0059218)

Consent Order No. 13-025-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the City of Opelika (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 plant (hereinafter "WWTP"), known as the Opelika Eastside WWTP, located at 3010 Columbus Parkway, in Opelika, Lee County, Alabama.
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 § 22-22A-4(n), Ala. Code (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 (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).
4. The Department issued National Pollutant Discharge Elimination System (hereinafter

"NPDES") Permit Number AL0059218 (hereinafter the "Permit") in accordance with ADEM Admin. Code r. 335-6-6 and the AWPCA, to the Permittee on December 15, 1999, effective January 1, 2000. The Permit was reissued on January 21, 2011, effective February 1, 2011. The Permit establishes limitations on the discharge of pollutants from such point source, designated therein as outfall number 0011, into an unnamed tributary to Halawakee Creek, a water of the State. 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 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.

5. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned unnamed tributary to Halawakee Creek in violation of the limits imposed by the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Permittee submitted a letter to the Department on May 15, 2012, with a corrective action plan regarding the permit exceedences for Total Recoverable Copper, Total Recoverable Nickel, and Total Recoverable Zinc.

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

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

CONTENTIONS

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 that delayed compliance may have conferred 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 \$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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment 1), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION AND BASE PENALTY:** Based on the information available to the Department, violations of the Permit, ADEM Admin. Code r. 335-6, and the AWPCA were noted. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public, the Department determined the base penalty to be \$2,800.00.

B. **THE STANDARD OF CARE:** In consideration of the standard of care provided by the Permittee, the Department believes the civil penalty sought in this matter is sufficient.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has not been able to determine if 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.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department is unaware of any previous violations similar to those noted above.

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

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

H. The civil penalty is summarized in Attachment 2.

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 penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$2,800.00 in settlement of the violations alleged herein. Failure to pay the civil penalty in accordance with the specified payment schedule may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. 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

C. If not already enrolled in the Department's Electronic Environmental Discharge Monitoring Reports Reporting System Program (hereinafter "E2 Program"), the Permittee agrees to prepare and submit to the Department a complete application for enrollment for all of its permitted facilities, so that it is received by the Department not later than 30 days after the effective date of this Consent Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the

E2 Program, the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than 14 days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

D. The Permittee agrees to prepare and submit to the Department, an Engineering Report that addresses the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, the need for new or additional treatment works, and the corrective actions to resolve the deficiencies noted, as applicable. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan). The Engineering Report must be prepared by a professional engineer licensed to practice in the State of Alabama. The Engineering Report will be submitted so that it is received by the Department no later than 90 days after the date of issuance of this Consent Order. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient, then the Permittee must modify the Engineering Report. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report not later than 365 days after the date of issuance of this Consent Order.

E. The Permittee agrees to prepare and submit detailed Quarterly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan. The Progress Reports should be submitted so that they are

received by the Department not later than three months after the date of issuance of this Consent Order and continuing every three months thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, the Permittee shall submit a written notice of noncompliance with each applicable imposed requirement. The notice of noncompliance shall be submitted so that it is received by the Department no later than fourteen days following each applicable due date contained in this Consent Order. Notices of noncompliance shall state the cause of noncompliance and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

F. The Permittee agrees to fully comply with the Permit limitations for Total Recoverable Nickel, Total Recoverable Copper, and Total Recoverable Zinc within 365 days from the effective date of this Consent Order.

G. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the effective date of this Consent Order.

H. The Permittee agrees to submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether or not the Permittee is in compliance with all requirements of this Consent Order. The certification will be submitted not later than 395 days after the date of issuance of this Consent Order.

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 satisfy any of the requirements set forth in or established by Paragraphs C, D, E, F, and H 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 C, D, E, F, and H, the Department reserves the right to file a new action against the Defendant.

J. The Parties agree that the cumulative stipulated penalties described in Paragraph I above shall under no circumstances exceed \$18,000.00. Once stipulated penalties of \$18,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the final compliance date specified in the approved Compliance Plan, 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.

K. The Permittee agrees that payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28th day of the month following the milestone date and each and every month thereafter until the milestone is completed or until the final compliance date of this Consent Order. 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 which are 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 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.

P. The Parties 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 other Orders as may be issued by the Director, by litigation initiated by the Department, or by 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 Parties 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 Parties 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 Parties agree that final approval and entry into this Consent Order are subject to the requirements 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 Consent Order.

T. The Parties 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 Parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

V. The Parties 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.

CITY OF OPELIKA

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By: Mika Hillyer
Its: Public Works Dir
Date: 10-12-12

By: Manly Elliott
Its: Deputy Director
Date: DEC -5 2012

Attachment 1: Violations Report

Facility Name: Opelika Eastside WWTP

Permit Number: AL0059218

Monitoring Period	Outfall	Violation Type	Parameter Code	Parameter	Average, Max, Min	Units	Permit Limits	Sample Result
June 2011	0011	Numeric Violation	01074	Total Recoverable Nickel	Monthly Avg.	µg/L	63.2	131
June 2011	0011	Numeric Violation	01119	Total Recoverable Copper	Monthly Avg.	µg/L	14.1	14.600
August 2011	0011	Numeric Violation	01074	Total Recoverable Nickel	Monthly Avg.	µg/L	63.2	103.00
August 2011	0011	Numeric Violation	01119	Total Recoverable Copper	Monthly Avg.	µg/L	14.1	15.100
November 2011	0011	Numeric Violation	01074	Total Recoverable Nickel	Monthly Avg.	µg/L	63.2	96.9
December 2011	0011	Numeric Violation	01074	Total Recoverable Nickel	Monthly Avg.	µg/L	63.2	143.0
December 2011	0011	Numeric Violation	01094	Total Recoverable Zinc	Monthly Avg.	µg/L	212	232
December 2011	0011	Numeric Violation	01094	Total Recoverable Zinc	Maximum Daily	µg/L	212	232
December 2011	0011	Numeric Violation	01119	Total Recoverable Copper	Monthly Avg.	µg/L	14.1	18.7
April 2012	0011	Numeric Violation	01074	Total Recoverable Nickel	Monthly Avg.	µg/L	63.2	67.2
April 2012	0011	Numeric Violation	01119	Total Recoverable Copper	Monthly Avg.	µg/L	14.1	14.9

Opelika Eastside WWTP AL0059218
Attachment II
Penalty Synopsis Worksheet

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Effluent Violations	11	\$2,800.00	\$0.00	\$0.00
Totals:	11	\$2,800.00	\$0.00	\$0.00
Economic Benefit*:				\$0.00
Mitigating Factors:				\$0.00
Ability to Pay*:				\$0.00
Other Factors*:				\$0.00
Final Penalty:				\$2,800.00

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

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