

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

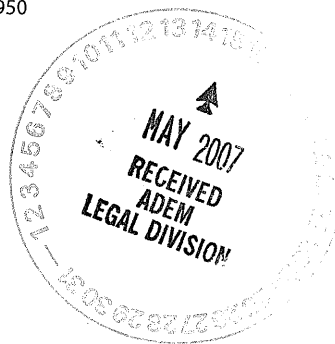
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

MAY 14 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William Sprott
Mosses Water and Sewer Authority
Post Office Box 146
Hayneville, Alabama 36040



RE: Mosses Water and Sewer Authority Lagoon
Lowndes County
Consent Order No. 07-107-CWP

Dear Mr. Sprott:

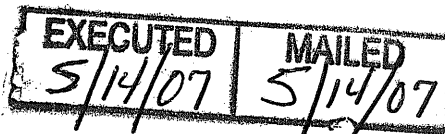
Please find enclosed ADEM Consent Order No. 07-107-CWP which requires you to take certain actions at the Mosses Water and Sewer Authority Lagoon in regard to alleged violations of the Alabama Pollution Control Act. This Consent Order has been issued with consent of the Mosses Water and Sewer Authority and the Department. Please note that the assessed civil penalty is due within 45 days.

Should you have any questions concerning this matter, please contact Mr. James Grassiano at (334) 271-7801.

Sincerely,

James E. McIndoe, Chief
Water Division

cc: Ms. Olivia H. Rowell, General Counsel
Ms. Glenda Dean, ADEM, Water
Katy Givens, ADEM, Municipal
Scott Story, ADEM, Municipal



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**

<u>IN THE MATTER OF:</u>)	
Mosses Water and Sewer Authority)	
)	
Mosses HCR Lagoon)	CONSENT ORDER NO. 07-107-CWP
Mosses (Lowndes County), Alabama)	
)	
<u>NPDES Permit No. AL0055883</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the Mosses Water and Sewer Authority (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (1997 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 plant known as Mosses HCR Lagoon located at Intersection of County Road 2 and County Road 3, in Mosses, Lowndes County, Alabama. The wastewater plant discharges pollutants from a point source into a water of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

3. Pursuant to § 22-22A-4(n), Ala. Code (1997 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, §§ 22-22-1 through 22-22-14, Ala. Code (1997 Rplc. Vol.).

4. On September 1, 2001 the Department issued NPDES Permit Number AL0055883 (hereinafter “the Permit”) to the Permittee, establishing limitations on the discharge of pollutants 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. Part II.E.1.a of the Permit 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.

6. 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.

7. The Department received a timely and complete application for permit renewal on February 22, 2006.

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

9. The Permittee violated Part II.A.1 of NPDES Permit AL0055883 by failing to properly operate and maintain the Mosses HCR Lagoon. This resulted in the discharge of wastewater without a permit, a violation of Ala. Code §22-22-9(i)(3) (1997 Rplc. Vol.). This unpermitted discharge was documented in the Department's May 13, 2005 Site Visit Memorandum and also in a Notice of Violation issued by the Department to the Permittee on September 28, 2005. As documented in the aforementioned Site Visit Memorandum, on May 10, 2005 the Department identified that the Permittee had not installed a regulating valve or cut off valve on the discharge from the outlet structure. Furthermore, no gage of any type was in place to measure the stream flow in the receiving stream. Thus, the Permittee was observed not to be providing control of its discharge in accordance with Part II. A of the permit. The Site Visit Memorandum notes that the plant operator, Mr. Lee McCurdy, stated that even though the facility is only permitted to discharge for the months of November through May, the Permittee may have to discharge throughout the rest of the year to maintain the lagoon at an operationally acceptable water level. If the lagoon level rises above a safe operating level, sewage may

back-up into the collection lines of the development and cause sanitary sewer overflows or may otherwise lead to other surface discharge to a water of the state. The accounts of such unpermitted discharges, if they occurred, are not noted in the facility's DMRs and were not reported to the Department in accordance with Part I.C.2.a of NPDES Permit AL0055883.

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

CONTENTIONS

12. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Cum. Supp.), in determining the amount of the 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. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Violations consisted of exceeding the weekly and monthly average permit limitations for total suspended solids (hereinafter "TSS"). Violations also consisted of exceeding the monthly average percent removal limits for TSS and five-day biochemical oxygen demand (herein after "BOD5"). In addition, since issuance of the permit in September 2001, the potential has existed for a repeated but unknown number of unpermitted discharges during low-stream flows and during the months of June through October. No occurrences of such discharges were reported to the Department. The Department has no evidence of irreparable harm to the environment or to the health and safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The Permittee failed to maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit. Also the Permittee has discharged wastewater during periods when such discharge was prohibited by the permit.

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

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of these violations.

E. HISTORY OF PREVIOUS VIOLATIONS: There were violations of a similar nature during the period prior to the two year period addressed by this Consent Order.

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

G. OTHER FACTORS: It should be noted that the 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 in 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 Cum. Supp.), 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 \$9,100 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 from the effective date may result in the Department's filing a civil action in the Circuit 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. 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 shall include a schedule for implementation (i.e., Compliance Plan) identifying the potential causes of noncompliance and describing the results of an investigation into the changes that the Permittee must implement to achieve compliance with NPDES Permit Number AL0055883. At a minimum, the Permittee must consider each of the following in making its determination: the need for changes in maintenance and operating procedures; the need for modification of existing treatment works; and the need for new or additional treatment works. In addition, the Permittee must consider facility changes necessary to ensure compliance with the operational and discharge requirements of the permit, including consideration of physically relocating its outfall to an appropriate location approved and permitted by the Department. 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 submittal 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 305 days after the effective date of this Consent Order.

D. The Permittee agrees to prepare and submit Semi-Annual Progress Reports describing in detail the Permittee's progress towards achieving compliance with the milestones identified in the 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, not later than fourteen days following each applicable due date contained in this Consent Order, the Permittee shall submit a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance 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.

E. The Permittee agrees to comply with the TSS, BOD₅ and percent removal limitations imposed by the effective Permit not later than 365 days after the date of entry of this Consent Decree. The Permittee further agrees to comply with all other terms, conditions (including the stream measurement and discharge restrictions, if so required), and limitations of the effective permit immediately upon the effective date of this Consent Order.

F. The Permittee agrees that, after the effective date of this Consent Order, for every violation of the NPDES Permit effluent limitations, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit

Number AL0055883, the Permittee shall pay to the Department the sum of \$200.00 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$400.00 for each and every monthly average violation.

G. The Permittee agrees that, after the effective date of this Consent Order, 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, C, D, and E contained herein the Permittee shall pay to the Department stipulated penalties. 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 the 60th day	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date 90 days after the required dates found in paragraphs A, C, D and E, then the Department reserves the right to file a new action against the Defendant.

H. The parties agree that the cumulative stipulated penalties described in paragraph F and G 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 730 days after the effective date of this Consent Order or as stipulated in paragraph H, above, 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.

H. The Permittee agrees that payment of stipulated penalties due for violations of effluent limitations under this Consent Order shall be due not later than ninety days after 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.

I. 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.

J. 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.

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

L. 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, compliance with the permit, 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 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, 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.

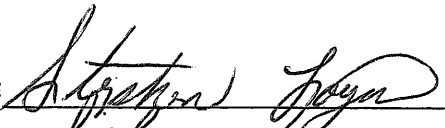
M. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the 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

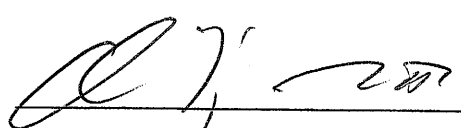
construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.


Executed in duplicate, with each part being an original.

MOSES WATER, SEWER,
AND FIRE PROTECTION

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 

By: 

Its: 

Its: _____

Date: 3/27/2007

Date: 5/14/07



Attachment 1

AL0055883 MOSSESS WWTP

DMR Value	Limit	Units	Averaging Time
Outfall ID: 0011			
December, 2004			
<u>BOD 5-DAY PERCENT</u>			
84.5	85	Percent	Monthly Average
<u>SOLIDS SUSP PERCENT</u>			
27	65	Percent	Monthly Average
January, 2005			
<u>SOLIDS SUSP PERCENT</u>			
0	65	Percent	Monthly Average
<u>TSS</u>			
96.3	90	mg/l	Monthly Average
March, 2005			
<u>SOLIDS SUSP PERCENT</u>			
0	65	Percent	Monthly Average
May, 2005			
<u>BOD 5-DAY PERCENT</u>			
58.5	85	Percent	Monthly Average
<u>BOD5 5 DAY 20 DEG C</u>			
36	30	mg/l	Monthly Average
<u>SOLIDS SUSP PERCENT</u>			
0	65	Percent	Monthly Average
<u>TSS</u>			
124	90	mg/l	Monthly Average
November, 2005			
<u>BOD 5-DAY PERCENT</u>			
0	70	Percent	Monthly Average
<u>BOD5 5 DAY 20 DEG C</u>			
1	65	30	mg/l Monthly Average
2	65	45	mg/l Weekly Average
<u>TSS</u>			
3	300	90	mg/l Monthly Average
4	300	135	mg/l Weekly Average