

ONIS "TREY" GLENN, III
DIRECTOR



BOB RILEY
GOVERNOR

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

September 22, 2008

CERTIFIED MAIL 7005 1820 0003 1879 2014
RETURN RECEIPT REQUESTED

Ray Hardin
General Manager
Decatur Utilities
Post Office Box 2232
Decatur, Alabama 35609-2232

RE: Consent Order No. 08-211-CWP
Decatur Dry Creek WWTP
NPDES Permit AL0048593
Morgan County

Dear Mr. Hardin:

Please find enclosed ADEM Consent Order No. 08-211-CWP 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 Decatur Utilities and the Department. Please note that the assessed civil penalty is due within 45 days.

If you have any questions regarding this matter, please contact Emily Anderson at (334) 271-7811.

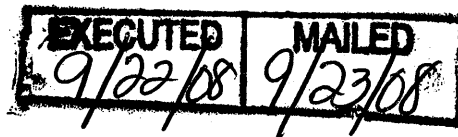
Sincerely,

James E. McIndoe, Chief
Water Division

JEM/cko

Enclosure

pc: James H. Carlson, ADEM
Vernon H. Crockett, ADEM
Olivia H. Rowell, Office of General Counsel
ADEM, Public Affairs Office
Cesar Zapata, US EPA Region IV
Emily Anderson, ADEM



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:)

Decatur Utilities)

Decatur Dry Creek WWTP)

Decatur, Morgan County, Alabama)

NPDES Permit No. AL0048593)

Consent Order No. 08-211-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Decatur Utilities (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 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 Decatur Dry Creek Wastewater Treatment Plant (hereinafter "the WWTP") located at 902 Wilson Street in Decatur, Morgan County, Alabama. The WWTP discharges pollutants from a point source into the Tennessee River, 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 through 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 through 22-22-14 (2006 Rplc.

Vol.).

4. On March 3, 2004, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0048593 (hereinafter "the Permit") to the Permittee, establishing limits on the discharge of pollutants into the Tennessee River from a point source described therein as Outfall Number 001-2. The Permit requires that the Permittee monitor its wastewater discharge and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the analytical results. 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. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from Outfall 001-2 into the aforementioned Tennessee River in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Permittee has violated Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.), by discharging untreated wastewater without a permit as a result of Sanitary Sewer Overflows (hereinafter "SSOs"). Each SSO led to an unauthorized discharge of untreated sewage into the Tennessee River, a water of the State. The list of reported SSOs is included in Attachment 2.

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

9. 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 violations, 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 violations upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or 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 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:** Violations consisted of exceeding the daily maximum permit limitations for Fecal Coliform. The Permittee also violated its permit by the discharge of untreated wastewater in the form of SSOs. The Department has no evidence of irreparable harm to the environment or any threat to the health and safety of the public as a result of these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to properly maintain its wastewater treatment and collection system to ensure compliance with permit limitations and conditions.

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 requirements.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects resulting from the violations stated herein.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department issued Consent Order 01-014-CWP on November 9, 2000, addressing violations of a similar nature and extent. A Notice of Violation was issued to the Permittee on December 5, 2007, to address the subsequent and additional SSO violations. The Notice of Violation has been unsuccessful at resolving ongoing permit violations.

F. **THE ABILITY TO PAY:** Based on available information, the Department believes the Permittee has the ability to pay a civil penalty.

G. OTHER FACTORS: Generally the violations fell into two broad categories of 1) discharges exceeding established limits, and 2) unpermitted discharges which have historically received penalty amounts of 1) \$100 to \$12,000, and 2) \$1,000 to \$25,000, respectively.

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.), including previous penalty amounts assessed for similar violations, 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 ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$52,700.00 to settle 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 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. The Permittee agrees to prepare and submit to the Department, not later than ninety days after the effective date of this Consent Order, an Engineering Report that includes a schedule for implementation (i.e., a Compliance Plan) and that identifies all potential causes of noncompliance. The report must summarize the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number

AL0048593. 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 need for modification of existing treatment works and collection system components: and the need for new or additional treatment works and collection system components. 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 NPDES Permit, then the Permittee shall modify the report so that it does accomplish compliance. 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 made in the Engineering Report within 730 days after the effective date of this Consent Order.

D. The Permittee agrees to prepare and submit detailed Semi-Annual Progress Reports to the Department describing the Permittee's progress towards achieving compliance with items presented in the Compliance Plan. Semi-Annual Progress Reports are to be submitted beginning six months after the effective date of this Consent Order, continuing every six months thereafter that the Permittee's performance 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 each applicable imposed requirement. 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. No later than 180 days after the effective date of this Consent Order, the Permittee agrees to comply with the Fecal Coliform limitations of its NPDES Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of the Permit immediately upon the effective date of this Consent Order.

F The Permittee shall significantly reduce or eliminate SSOs in the Decatur Utilities sewer system no later than:

1. 720 days after the effective date of this Consent Order in Basin 10.
2. 1800 days after the effective date of this Consent Order in all other basins within the Decatur Utilities sewer system.

G. Upon each event (i.e., upon every twenty-four hour period for overflows/bypasses lasting more than twenty-four consecutive hours and upon every occurrence of any overflow/bypass lasting less than twenty-four hours) of an unpermitted discharge, the Permittee shall prepare and submit records of all unpermitted discharges of wastewater to the Department including SSOs, bypasses, etc. (i.e., any discharge of wastewater from any point other than an NPDES permitted outfall). Such records shall accompany a written report submitted to the Department within five days after commencement of each event. The report shall contain at least the following information: i) the cause (known or suspected) of the discharge; ii) estimated volume (if determinable); iii) description of the source (e.g.; manhole, pump station); iv) identification of the collection system that overflowed; v) location, by street address or any other appropriate method; vi) date of event; vii) ultimate destination of the flow (e.g., name of surface waterbody, land use location, name of surface waterbody via municipal separate storm sewer system (reference location by basin and street address and/or cross streets); viii) corrective action plans to eliminate future discharges; ix) name and title of person reporting the discharge; x) weather conditions and xi) a certification statement similar to those contained in DMRs concerning the accuracy of information.

H. The Permittee agrees that, after the effective date of this Consent Order, it will pay stipulated civil penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C, D, E, and F contained herein. The stipulated civil penalties for failure to meet each milestone outlined herein or for failure to meet any milestone date presented in the accepted Compliance Plan or any other requirement date, except for *Force Majeure* acts hereinafter defined as acts that occur beyond the Permittee's control, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
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 for a period of ninety days after any required date described in paragraphs A, C, D, E, and F, then the Department reserves the right to file a new action against the Permittee.

I. The parties agree that the cumulative stipulated penalties described in paragraph G above shall under no circumstances exceed \$24,000.00. Once stipulated penalties of \$24,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur 730 days after the effective date of this Consent Order, as stated in paragraph E above, then the Department shall be free to issue additional orders or to file suit against the Permittee in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

J. The Permittee agrees that payment of stipulated penalties due for any violations stated herein shall be due not later than the 28th day of the month following 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.

K. 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.

L. 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.

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

N. 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 that are beyond the reasonable control of the Permittee, including its contractors and consultants, that 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 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.

O. 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 that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by 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.

P. 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.

Q. 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.

R. The Department and the Permittee agree that final approval and entry into this Consent Order is 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 Consent Order.

S. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or by 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.

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

U. 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.

DECATUR UTILITIES

By: *Ray Hardin*
Its: GENERAL MANAGER
Date: JULY 16, 2008

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: *Marilyn Elliott*
Its: Deputy Director
Date: September 22, 2008

CERTIFICATE OF SERVICE

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

**Ray Hardin, General Manager
Decatur Utilities
Post Office Box 2232
Decatur, Alabama 35609-2232**

Done this 23rd day of September, 2008.

Ashlee Nichols
Name

Attachment 1

AL0048593 Decatur Dry Creek WWTP

DMR Value	Limit	Units	Averaging Time
Outfall ID:0012			

August, 2006

	<u>FECAL COLIFORM SUMMER</u>			
1	6000	4000	#/100 ml	Daily Maximum

March, 2007

	<u>FECAL COLIFORM SUMMER</u>			
2	6000	4000	#/100 ml	Daily Maximum

Attachment 2-SSO Events

Reports Between 05/01/2006 and 05/20/08

County Name *Morgan*

Facility Name: Decatur Dry Creek WWTP		Permit Number: AL0048593	FacilityType: Major	ADEM Area: Anderson	
Overflow Date	Volume of SSO	Length of SSO	Destination of SSO	Location	Cause
9/23/2006	< 5 gallons	< 30 min	Tennessee River	Manhole #2269	Stoppage in main
10/25/2006	< 50 gallons	1.0 hrs	Tennessee River	Manhole #6207	Stoppage in main
11/15/2006	1,000 gallons	9.5 hrs*	Tennessee River	Manhole #1445	2.6" rainfall
11/15/2006	1,000 gallons	9.5 hrs*	Tennessee River	Manhole #4887	2.6" rainfall
11/15/2006	1,000 gallons	9.5 hrs*	Tennessee River	Manhole #4888	2.6" rainfall
12/8/2006	500 gallons	30 min	Tennessee River	Manhole #67	Transducer failure at Baker's Creek lift station
12/31/2006	4,000 gallons**	14 hours*	Tennessee River	Manhole #4887	2.23" rainfall
12/31/2006	4,000 gallons**	14 hours*	Tennessee River	Manhole #4907	2.23" rainfall
12/31/2006	4,000 gallons**	14 hours*	Tennessee River	Manhole #4908	2.23" rainfall
12/31/2006	4,000 gallons**	14 hours*	Tennessee River	Manhole #4912	2.23" rainfall
1/6/2007	200 gallons	30 min	Tennessee River	1307 4th Street NW	Stoppage in main
2/12/2007	< 1000 gallons	2 hrs	Tennessee River	Manhole #5373	Stoppage in 8" main
2/12/2007	< 1000 gallons	1 hr	Tennessee River	Manhole #2024	Stoppage in 8" main
3/21/2007	<100 gallons	1/2 hour	Tennessee River	Manhole #3965	Stoppage in 8" main
8/15/2007	200 gallons	0.5 hours	Tennessee River	1455 Red Hat Road NW	1/2" pipe nipple broke off air release valve causing discharge
11/17/2007	240,000 gallons	4 hours	Tennessee River	Manhole #67	Pumps at Bakers Creek Lift Station malfunctioned causing a backup and overflow.
1/14/2008	1000 gallons	2 hours	Dry Branch to the Tennessee River	Manhole #5273	Stoppage in 8" main

Overflow Date	Volume of SSO	Length of SSO	Destination of SSO	Location	Cause
2/4/2008	1000 gallons	4 hours	Dinsmore Slough to the Tennessee River	Manhole # 4904	3.2" rainfall since 1/29/08
2/4/2008	276,000 gallons	44 hours	Dinsmore Slough to the Tennessee River	Manhole #4887	3.2" rainfall since 1/29/08
2/4/2008	60,000 gallons	10 hours	Dinsmore Slough to the Tennessee River	Manhole #4912	3.2" rainfall since 1/29/08
2/4/2008	1000 gallons	4 hours	Dinsmore Slough to the Tennessee River	Manhole #4891	3.2" rainfall since 1/29/08
2/4/2008	1000 gallons	4 hours	Dinsmore Slough to the Tennessee River	Manhole #4894	3.2" rainfall since 1/29/08
2/4/2008	1000 gallons	4 hours	Dinsmore Slough to the Tennessee River	Manhole #4886	3.2" rainfall since 1/29/08
2/4/2008	1000 gallons	4 hours	Dinsmore Slough to the Tennessee River	Manhole #4888	3.2" rainfall since 1/29/08
2/4/2008	1000 gallons	5 hours	Dinsmore Slough to the Tennessee River	Manhole #4908	3.2" rainfall since 1/29/08
2/6/2008	245,000 gallons	72 hours	Dinsmore Slough to the Tennessee River	Manhole #4887	1.01" rainfall overnight
2/6/2008	45,000 gallons	7.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4912	1.01" rainfall overnight
2/6/2008	1,000 gallons	7.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4908	1.01" rainfall overnight
2/6/2008	1,000 gallons	7.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4904	1.01" rainfall overnight
2/6/2008	1,000 gallons	7.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4888	1.01" rainfall overnight
3/5/2008	1,000 gallons	3.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4912	I&I due to 1.3" rainfall on March 4, 2008
3/5/2008	1,000 gallons	3.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4888	I&I due to 1.3" rainfall on March 4, 2008
3/5/2008	1,000 gallons	3.5 hours	Dinsmore Slough to the Tennessee River	Manhole #4907	I&I due to 1.3" rainfall on March 4, 2008
3/5/2008	46,000 gallons	13.9 hours	Dinsmore Slough to the Tennessee River	Manhole #4887	I&I due to 1.3" rainfall on March 4, 2008
3/15/08	1,000 gallons	14.25 hours*	Dinsmore Slough to the Tennessee River	Manhole #4912	I&I due to 1.5" rainfall on March 15, 2008
3/15/08	1,000 gallons	14.25 hours*	Dinsmore Slough to the Tennessee River	Manhole #4888	I&I due to 1.5" rainfall on March 15, 2008
3/15/08	17,000 gallons	14.25 hours*	Dinsmore Slough to the Tennessee River	Manhole #4887	I&I due to 1.5" rainfall on March 15, 2008
3/18/08	200 gallons	0.7 hours	Dry Branch to the Tennessee River	Manhole #1843	Stoppage in 8" main

* Only the total duration of the SSO was provided

** Only the total volume of the SSO was provided