

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

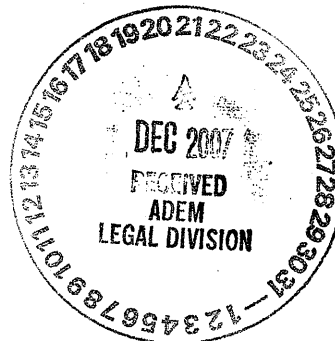
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

December 20, 2007

CERTIFIED MAIL 7005 1820 0003 1880 3598
RETURN RECEIPT REQUESTED

Mr. Anthony Crear
Sumter County Commission
P.O. Box 328
Livingston, Alabama 35470



Re: Consent Order No. 08-065-CWP
Bellamy Lagoon
NPDES Permit No. AL0071056
Sumter County

Dear Mr. Crear:

Please find enclosed ADEM Consent Order No. 08-065-CWP which requires you to take certain actions at the Bellamy Lagoon in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the Sumter County Commission and the Department. Please note that the assessed civil penalty is due within 45 days.

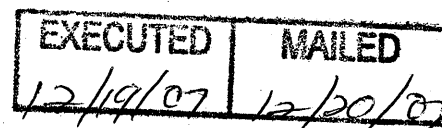
If you have any questions, please do not hesitate to contact Mr. James W. Grassiano at (334) 271-7801.

Sincerely,

James E. McIndoe, Chief
Water Division

Enclosures

CC: Glenda Dean, ADEM-Water Division (email)
Olivia H. Rowell, Office of General Counsel
ADEM-Public Affairs Office (email)
Cesar Zapata, USEPA Region IV



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:)

Sumter County Commission)

Bellamy Lagoon)

Livingston (Sumter County), AL)

NPDES Permit No. AL0071056)

Consent Order No: 08-065-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the Sumter County Commission (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 Bellamy Lagoon (hereinafter the "Facility") located at Alder Street in Bellamy, Sumter County, Alabama. The Facility discharges pollutants from a point source into Sucarnoochee 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 July 19, 2004, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0071056 (hereinafter "the Permit") to the Permittee, establishing limits on the discharge of pollutants into Sucarnoochee River from such point source, designated therein as outfall number 001. 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. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Sucarnoochee 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 consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

7. 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

The Permittee neither admits nor denies the Department's allegations, but rather contends that its 2006 and 2007 Annual Municipal Water Pollution Prevention Reports provided to the Department reflect a two year period wherein the Permittee had no Sanitary Sewer Overflows. However, the Permittee provided that much of its collection system is in poor condition and will have to be replaced. The Permittee further contends that the present state of its collection system is a significant cause of Infiltration and Inflow (hereinafter "I&I"), which is believed to be a significant cause of its Permit non-compliance. In addition, the Permittee alleges that resolution of I&I problems is a precursor to consistent Facility effluent compliance.

The Department neither admits nor denies the Permittee's 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 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. 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 VIOLATIONS: Violations consisted of exceeding monthly average permit limitations for fecal coliform (hereinafter "FC"), five-day carbonaceous biochemical oxygen demand (hereinafter "CBOD₅"), CBOD₅ percent removal, total suspended solids (hereinafter "TSS"), and TSS percent removal. The violations also included exceeding the daily maximum permit limit for FC and the daily minimum for pH. 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 the 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 VIOLATIONS UPON THE ENVIRONMENT: There are no known environmental effects as a result of the violations.

E. HISTORY OF PREVIOUS VIOLATIONS: Warning letters were issued on May 2, 2007, and May 21, 2007, for effluent violations in February 2007 and March 2007, respectively. On June 29, 2006, a Notice of Violation was issued for effluent violations up through December 2005. On October 27, 2006, a Warning letter was issued for a Compliance Evaluation Inspection of the Facility, at which time the Facility was found to be unsatisfactory due to ongoing effluent violations. The prior enforcement has been unsuccessful at resolving ongoing permit violations.

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

G. OTHER FACTORS: It should be noted that this 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 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 Rplc. Vol.), 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 \$4,100.00 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 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). The report must summarize the Permittee's investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number AL0071056. At a minimum, the Permittee shall consider each of the following in making that determination: the need for changes in maintenance and operating procedures, 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 must outline a compliance schedule for implementing the necessary upgrades to the Facility and it must present a compliance plan which resolves I&I problems in the collection system. 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 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 presented in the accepted Engineering Report regarding the treatment Facility within 670 days after the effective date of this Consent Order. In addition, the Permittee agrees to complete all necessary repairs and replacement work related to the collection system within 1642 days after the effective date of this Consent Order.

D. The Permittee agrees to prepare and submit Semi-Annual Progress Reports to the Department describing in detail the Permittee's progress towards achieving compliance with items presented 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 that is 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, corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. No later than 730 days after the effective date of this Consent Order, the Permittee agrees to comply with the FC, CBOD₅, pH, and TSS limitations of NPDES Permit Number AL0071056 unless the limits cannot be achieved due to the direct result

of I&I problems in the collection system. Not later than 1642 days after the effective date of this Order, all I&I concerns must be resolved and thereafter, the Permittee agrees to fully comply with the FC, CBOD₅, pH, and TSS limitations of NPDES Permit Number AL0071056. The Permittee further agrees to comply with all other terms, conditions, and limitations of its NPDES 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 and bypasses that have been properly documented and substantiated as required by Part II.C.2 of the Permit, the Permittee shall pay to the Department the sum of \$100.00 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$150.00 for each and every monthly average violation. However, violations resulting from the I&I referenced in paragraph E above and described elsewhere in this Order shall not be deemed an upset or bypass condition.

G. 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, and D contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts hereinafter defined as acts that 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 60 days	\$ 300.00

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

H. The parties agree that the cumulative stipulated penalties described in paragraphs F and G above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 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, as stated in paragraph G 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 in another court of competent jurisdiction to enforce compliance of this Consent Order.

I. The Permittee agrees that payment of stipulated penalties due for violations of effluent limitations under this Consent Order 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.

J. 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.

K. 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.

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

M. 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, 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.

N. 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.

O. 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.

P. 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.

Q. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of

proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

R. 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.

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

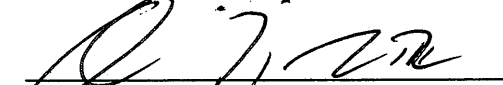
T. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations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

Executed in duplicate, with each part being an original.

SUMTER COUNTY COMMISSION

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 

By: 

Its: County Engineer

Its: Director

Date: 10/23/2007

Date: 12/19/07

CERTIFICATE OF SERVICE

I, Carolyn K. Overman, hereby certify that I
have this date served the foregoing Administrative Order on
Anthony Crear by regular United States Mail, properly addressed
and postage prepaid to:

**Mr. Anthony Crear
Sumter County Commission
P. O. Box 328
Livingston, AL 35470**

Done this 20th day of December, 2007.

Carolyn K. Overman
Name

Attachment 1

AL0071056 BELLAMY LAGOON

DMR Value Limit Units Averaging Time
Outfall ID: 0011

November, 2005

<u>BOD CARBONACEOUS 5DAY 20C</u>				
1	27	25	mg/l	Monthly Average
<u>CBOD 5 Day Percent Removal</u>				
2	62.5	65	Percent	Monthly Average
<u>SOLIDS SUSP PERCENT</u>				
3	59.6	65	Percent	Monthly Average

December, 2005

<u>CBOD 5 Day Percent Removal</u>				
4	59	65	Percent	Monthly Average
<u>FECAL COLIFORM WINTER</u>				
5	1445	1000	#/100 ml	Monthly Geo Mean

March, 2006

<u>FECAL COLIFORM WINTER</u>				
6	3700	1000	#/100 ml	Monthly Geo Mean
7	3700	2000	#/100 ml	Daily Maximum

April, 2006

<u>SOLIDS SUSP PERCENT</u>				
8	64.2	65	Percent	Monthly Average

June, 2006

<u>BOD CARBONACEOUS 5DAY 20C</u>				
9	25.3	25	mg/l	Monthly Average

July, 2006

<u>SOLIDS SUSP PERCENT</u>				
10	57.5	65	Percent	Monthly Average

September, 2006

<u>FECAL COLIFORM SUMMER</u>				
11	1400	200	#/100 ml	Monthly Geo Mean
<u>SOLIDS SUSP PERCENT</u>				
12	40.3	65	Percent	Monthly Average

October, 2006

<u>BOD CARBONACEOUS 5DAY 20C</u>				
13	34.5	25	mg/l	Monthly Average
<u>CBOD 5 Day Percent Removal</u>				
14	56.2	65	Percent	Monthly Average
<u>FECAL COLIFORM WINTER</u>				
15	8000	1000	#/100 ml	Monthly Geo Mean
16	8000	2000	#/100 ml	Daily Maximum
<u>PH</u>				
17	5.4	6	SU	Daily Minimum
<u>SOLIDS SUSP PERCENT</u>				
18	23.6	65	Percent	Monthly Average

November, 2006

FECAL COLIFORM WINTER

19	6800	1000	#/100 ml	Monthly Geo Mean
20	6800	2000	#/100 ml	Daily Maximum
<u>PH</u>				
21	5.4	6	SU	Daily Minimum
<u>SOLIDS SUSP PERCENT</u>				
22	35.2	65	Percent	Monthly Average

December, 2006

<u>BOD CARBONACEOUS 5DAY 20C</u>				
23	32	25	mg/l	Monthly Average
<u>FECAL COLIFORM WINTER</u>				
24	22000	1000	#/100 ml	Monthly Geo Mean
25	22000	2000	#/100 ml	Daily Maximum
<u>SOLIDS SUSP PERCENT</u>				
26	34.4	65	Percent	Monthly Average

January, 2007

<u>FECAL COLIFORM WINTER</u>				
27	7000	1000	#/100 ml	Monthly Geo Mean
28	7000	2000	#/100 ml	Daily Maximum
<u>SOLIDS SUSP PERCENT</u>				
29	0	65	Percent	Monthly Average

February, 2007

<u>BOD CARBONACEOUS 5DAY 20C</u>				
30	27.5	25	mg/l	Monthly Average

<u>FECAL COLIFORM WINTER</u>				
31	9500	1000	#/100 ml	Monthly Geo Mean
32	9500	2000	#/100 ml	Daily Maximum
<u>SOLIDS SUSP PERCENT</u>				
33	0	65	Percent	Monthly Average

March, 2007

<u>SOLIDS SUSP PERCENT</u>				
34	30.3	65	Percent	Monthly Average

April, 2007

<u>FECAL COLIFORM WINTER</u>				
35	4000	1000	#/100 ml	Monthly Geo Mean
36	4000	2000	#/100 ml	Daily Maximum
<u>SOLIDS SUSP PERCENT</u>				
37	1	65	Percent	Monthly Average
<u>TSS</u>				
38	95	90	mg/l	Monthly Average

May, 2007

<u>FECAL COLIFORM WINTER</u>				
39	30000	1000	#/100 ml	Monthly Geo Mean
40	30000	2000	#/100 ml	Daily Maximum
<u>SOLIDS SUSP PERCENT</u>				
41	25.3	65	Percent	Monthly Average