

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

JUN 14 2006

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Troy Mitchell, Utility Board Chairman
Town of Millry
Post Office Box 563
Millry, AL 36558

RE: Millry Lagoon
Washington County
Consent Order No. 06-064-CWP

Dear Mr. Mitchell:

Please find enclosed ADEM Consent Order No. 06-064-CWP which requires you to take certain actions at the Millry Lagoon in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the Town of Millry 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,

A handwritten signature in black ink, appearing to read "James E. McIndoe".

James E. McIndoe, Chief
Water Division

Enclosures

Cc: Glenda Dean, ADEM-Water Division
Olivia H. Rowell, Office of General Counsel
ADEM-Public Affairs Office
Arthur Collins, US EPA Region IV



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

The Town of Millry

Millry Lagoon

Millry, Washington County, AL

NPDES Permit No. AL0051144

Consent Order No. 06-064-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the Town of Millry (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act, Code of Alabama, 1975, §§ 22-22-1 through 22-22-14, as amended, 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 Millry Lagoon located on Martin Luther King Jr. Drive, in Millry, Washington County, Alabama. The wastewater treatment facility discharges pollutants from a point source into Mill Creek, 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, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, 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. §§ 1342 *et seq.* 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, Code of Alabama, 1975, as amended.

4. On January 1, 2006, the Department issued the Permittee's NPDES Permit Number AL0051144 (hereinafter "the Permit") establishing limitations on the discharge of pollutants from such point source, designated therein as outfall number 0011, into Mill Creek. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The DMR's submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Mill Creek 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 DMR's submitted to the Department by the Permittee indicate that the Permittee has incorrectly recorded and reported flow values for the months of June 2005 through December 2005 to the Department.

7. On July 26, 2005, a Compliance Sampling Inspection (CSI) was performed by the Department's Field Operations Division at the Permittee's facility. The Department noted during the subject inspection that two of the three cells were completely covered with duckweed and that the receiving water appearance was cloudy and had a reddish brown color. Also noted in the CSI Report was a Carbonaceous Biochemical Oxygen Demand Percent Removal level of 50%, a Total Suspended Solid Percent Removal level of 0%, and a Fecal Coliform concentration level of 1900 col/100ml, all of which, violate the limitations established by the current Permit as shown in Attachment 1. The Permittee is required to maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

8. Pursuant to Code of Alabama, 1975, §22-22-9(f), the Permittee violated Provision II A. 1 of the Permit by the failure to properly operate and maintain all treatment and control facilities and systems installed or used by the Permittee to achieve compliance with the conditions of the Permit.

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

10. 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

11. Pursuant to Code of Alabama, 1975, § 22-22A-5(18)c., 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 number. 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 exceedances of weekly average and monthly average permit limitations for Five day Carbonaceous Biochemical Oxygen Demand (CBOD5), Percent Removal of CBOD5, Total Suspended Solids (TSS), and Percent Removal of TSS. The violations also included daily maximum and monthly average exceedances of the permit limitations for Fecal Coliform. 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:** On July 26, 2005, a Compliance Sampling Inspection (CSI) was performed by the Department's Field Operations Division at the

Permittee's facility. During the subject inspection, The Department noted that two of the three cells were completely covered with duckweed and that the appearance of the receiving water was cloudy and had a reddish brown color. 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.

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 the violations cited herein.

E. HISTORY OF PREVIOUS VIOLATIONS: ADEM issued a Notice of Violation (NOV) for the subject permit exceedances and violations on September 30, 2005. There is no other record of historic permit violations related to the Millry Lagoon.

F. THE ABILITY TO PAY: Based upon information available to the Department, the Department believes that 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 Code of Alabama, 1975, § 22-22A-5(18)c, 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 Four Thousand Six Hundred dollars (\$4,600) in settlement of the violations alleged herein within 45 days from the effective date of this Consent Order. Failure to pay the civil penalty within 45 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 (90) days after the effective date of this Consent Order, an Engineering Report that identifies the potential causes of noncompliance and investigates the need for changes necessary for the Permittee to achieve compliance with NPDES Permit Number AL0051144. The Engineering Report shall include a schedule for implementation (i.e. a Compliance Plan). At a minimum, the Permittee's Engineering Report shall address the following: 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. 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 submitted is not sufficient to accomplish compliance with the NPDES permit, then the Permittee shall modify the Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to ADEM no later than 30 days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations made in the Engineering Report within 670 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 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 (14) 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 seven hundred thirty (730) days after the date of entry of this Consent Decree, the Permittee agrees to comply with the for Fecal Coliform, Five day Carbonaceous Biochemical Oxygen Demand (CBOD5), Percent Removal of CBOD5, Total Suspended Solids (TSS), and Percent Removal of TSS limitations of NPDES Permit Number AL0051144. 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 that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0051144, the Permittee shall pay to the Department the sum of one hundred dollars (\$100.00) for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and two hundred dollars (\$200.00) for each and every monthly average violation.

G. The parties agree that the cumulative stipulated penalties described in paragraph F. above shall under no circumstances exceed twenty-four thousand dollars (\$24,000). Once stipulated penalties of twenty-four thousand dollars (\$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, 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 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 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.

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 which are 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 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 10 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.

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 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.

N. 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.

O. 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.

P. 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 (30) days within which to comment on the Consent Order.

Q. 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.

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

S. 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.

The Town of Millry

By: Roy Chapman
Its: Mayor
Date: 4-24-06

**Alabama Department of
Environmental Management**

By: [Signature]
Its: Director
Date: 6/13/06

Attachment 1

AL0051144 MILLRY LAGOON

DMR Value Limit Units Averaging Time
Outfall ID: 0011

June, 2004

<u>BOD CARBONACEOUS</u>				
1	20	18	mg/l	Monthly Average
<u>FECAL COLIFORM SUMMER</u>				
2	1200	200	#/100 ml	Monthly Geo Mean
<u>CBOD 5 Day Percent Removal</u>				
3	53	65	Percent	Monthly Average
<u>SOLIDS SUSP PERCENT</u>				
4	40	65	Percent	Monthly Average

July, 2004

<u>FECAL COLIFORM SUMMER</u>				
5	1300	200	#/100 ml	Monthly Geo Mean

September, 2004

<u>BOD CARBONACEOUS</u>				
6	32	18	mg/l	Monthly Average
7	19.2	19.1	lbs/day	Weekly Average
8	32	27	mg/l	Weekly Average
<u>CBOD 5 Day Percent Removal</u>				
9	57	65	Percent	Monthly Average
<u>FECAL COLIFORM SUMMER</u>				
10	6000	200	#/100 ml	Monthly Geo Mean
11	6000	2000	#/100 ml	Daily Maximum

SOLIDS SUSP PERCENT

12	60	65	Percent	Monthly Average
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October, 2004

<u>BOD CARBONACEOUS</u>				
13	20	19.1	lbs/day	Weekly Average
<u>SOLIDS SUSP PERCENT</u>				
14	55	65	Percent	Monthly Average

January, 2005

<u>BOD CARBONACEOUS WINTER</u>				
15	23	21.2	lbs/day	Monthly Average
16	42	31.9	lbs/day	Weekly Average

SOLIDS SUSP PERCENT

17	35	65	Percent	Monthly Average
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TSS

18	145	95.7	lbs/day	Weekly Average
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March, 2005

<u>BOD CARBONACEOUS WINTER</u>				
19	34	30	mg/l	Monthly Average

April, 2005

<u>CBOD 5 Day Percent Removal</u>				
20	45	65	Percent	Monthly Average

SOLIDS SUSP PERCENT

21	23	65	Percent	Monthly Average
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May, 2005

<u>CBOD 5 Day Percent Removal</u>				
22	60	65	Percent	Monthly Average

FECAL COLIFORM SUMMER

23	6000	200	#/100 ml	Monthly Geo Mean
24	6000	2000	#/100 ml	Daily Maximum

SOLIDS SUSP PERCENT

25	23	65	Percent	Monthly Average
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June, 2005

BOD CARBONACEOUS

26	19	18	mg/l	Monthly Average
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FECAL COLIFORM SUMMER

27	6000	200	#/100 ml	Monthly Geo Mean
28	6000	2000	#/100 ml	Daily Maximum

July, 2005

CBOD 5 Day Percent Removal

29	54	65	Percent	Monthly Average
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FECAL COLIFORM SUMMER

30	380	200	#/100 ml	Monthly Geo Mean
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SOLIDS SUSP PERCENT

31	23	65	Percent	Monthly Average
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August, 2005

BOD CARBONACEOUS

32	19	18	mg/l	Monthly Average
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FECAL COLIFORM SUMMER

33	6000	200	#/100 ml	Monthly Geo Mean
34	6000	2000	#/100 ml	Daily Maximum

SOLIDS SUSP PERCENT

35	46	65	Percent	Monthly Average
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September, 2005

SOLIDS SUSP PERCENT

36	30	65	Percent	Monthly Average
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October, 2005

SOLIDS SUSP PERCENT

37	61	65	Percent	Monthly Average
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November, 2005

SOLIDS SUSP PERCENT

38	63	65	Percent	Monthly Average
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December, 2005

SOLIDS SUSP PERCENT

39	59	65	Percent	Monthly Average
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