

ALABAMA DEPARTMENT OF  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )

THE UTILITIES BOARD OF )

THE CITY OF DECATUR )

NPDES PERMIT NO. AL0048593 )

CONSENT ORDER NO. 97-121-CWP

FINDINGS

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, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, §402, 33 U.S.C. §1342, and without the adjudication of any issues of fact or law and upon the Consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. The Decatur Utilities (hereinafter, "the Permittee") operates a waste treatment facility known as the Decatur Wastewater Treatment Plant which discharges pollutants from a point source into the Tennessee River, a water of the State.

*executed* *mailed*  
11/20/87 11/21/87

2. The Alabama Department of Environmental Management (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 water pollution control agency for the purposes of the federal Clean Water Act, 33 U.S.C. §§ 1251 through 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, Code of Alabama 1975, as amended.

4. On September 30, 1993, the Department issued Administrative Order Number 93-110-WP to the Permittee. In accordance with paragraphs D and E of the Order, the Permittee was required to complete construction of additional treatment works and achieve compliance with all discharge limitations in NPDES Permit Number AL0048593 no later than September 1, 1996, and December 1, 1996, respectively.

5. The Permittee has notified the Department by letter dated November 19, 1996, of noncompliance with said Administrative Order. The Permittee has requested a time extension to the contract to account for days unavailable to work due to adverse weather.

6. The Permittee agrees with the Findings presented in this Consent Order, and in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Permittee has consented to the terms of this Order.

7. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

8. The Permittee waives the right to an informal conference prior to the issuance of this Consent Order and waives the right to a hearing before the Environmental Management Commission upon issuance of this Consent Order.

### ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-22-9(1), and 22-22-9(k), as amended, and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That, commencing immediately after receiving notice of this Consent Order, the Permittee shall comply with all the monitoring and reporting provisions of NPDES Permit Number AL0048593 to the extent not inconsistent with this Order.

B. That, paragraph D of Administrative Order Number 93-110-WP is amended by extending the date that the Permittee shall substantially complete (have operational) the expanded Decatur Wastewater Treatment Plant from September 1, 1996, to no later than April 21, 1997.

C. That paragraph E of Administrative Order Number 93-110-WP is amended by extending the date that the Permittee shall achieve compliance with the discharge limitations in NPDES Permit Number AL0048593 from December 1, 1996, to no later than July 1, 1997.

D. That, the Permittee shall pay to the Department, upon demand, stipulated penalties for each day it fails to meet any of the milestone dates established in this Consent Order. The

stipulated penalties for failure to meet each milestone date or any requirement date shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$100
31st to 60th day	\$200
After 60 days	\$300

E. 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.

F. 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 Order.

G. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. That, for purposes of this Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. 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.

I. It is the express purpose of the parties entering into this Consent Order to further the objectives set forth in the Alabama Water Pollution Control Act, §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended, and the Clean Water Act. In light of these objectives, the Permittee agrees to, inter alia, cause the expeditious implementation of the remedial measures as herein set forth and in accordance with the schedules approved by the Alabama Department of Environmental Management, take all steps necessary to: (1) achieve full compliance with its NPDES permit, (2) achieve full compliance with the Clean Water Act, and (3) comply with all other conditions of this Consent Order. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Order, then such future violations shall 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 Order if such future orders, litigation or other enforcement action based on the issuance of this Order if such future orders, litigation or other enforcement action address new matters not raised in any previous order.

J. By agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Respondent hereby waives any hearing on the terms and conditions of same.

DECATUR UTILITIES

By: 

DATE: 12/31/96

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: 

DATE: 6 Jan 97