ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: City of Tuscaloosa Tuscaloosa WWTP Tuscaloosa, Alabama Tuscaloosa County NPDES Permit No. AL0022713	))))))))	Consent Order No. - -CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the City of Tuscaloosa (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 Tuscaloosa Wastewater Treatment Plant (hereinafter "WWTP") located at 3900 Kauloosa Avenue in Tuscaloosa, Tuscaloosa County, Alabama. The WWTP discharges pollutants from point sources into the Black Warrior River and Cribbs Mill Creek, waters 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. The Department reissued the Permittee's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0022713 (hereinafter "Permit") on July 14, 2000, establishing limits on the discharge of pollutants from a point source, designated therein as Outfall 001-1 into the Balck Warrior River, a water of the State.

5. The Department modified the Permit on December 5, 2003, establishing limits on the discahrge of pollutants from point sources, designated therein as Outfalls 001-1 and 002-1 into the Black Warrior River and Cribbs Mill Breek, respectively, waters of the State. 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. In addition, the Permit 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.

6. The modified Permit was initially transmitted to the Permittee on November 21, 2003, with an issuance date of November 21, 2003, an effective date of December 1, 2003, and an expiration date of November 30, 2008. A corrected modified Permit cover page was transmitted to the Permittee on December 5, 2003. The corrected modified Permit cover page included an issuance date of July 14, 2000, with an effective date of September 1, 2000, an expiration date of August 31, 2005, and a modification date of December 5, 2003.

7. Part II.E.1.a of the Permit requires that the Permittee file a complete application for permit reissuance within at least 180 days prior to the Permit's expiration if the Permittee intends to discharge beyond the expiration date of the Permit. The expiration date of the Permit was August 31, 2005. The Permittee's application was due to be submitted to the Department no later than March 4, 2005. The Department received the application for permit reissuance on December 8, 2008.

8. ADEM Administrative Code Rule 335-6-6-.06 provides that 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 its NPDES

permit and if any subsequent delay in permit issuance is not caused by the actions of the Permittee.

9. Part II.E.1.b of the Permit states that "Failure of the Permittee to apply for permit reissuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Administrative Code Rule 335-6-6-.06 and, should the permit not be reissued for any reason, any discharge after expiration of this permit will be an unpermitted discharge."

10. All discharges from Outfalls 001-1 and 002-1 into the Black Warrior River and Cribbs Mill Creek, respectively, have been unpermitted since the expiration date of the Permit.

11. The Permittee violated Part I.C.1 of the Permit by failing to submit DMRs that included Total Kjeldahl Nitrogen (hereinafter "TKN") data in a timely manner, as required by the Permit. The TKN data for 2007 was recevied by the Department on January 20, 2009. And the TKN data for 2008 was receveid by the Department on February 2, 2009.

12. The Permittee violated Part I.C.1 of the Permit by failing to submit DMRs for Outfall 002-1.

13. The Permittee 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") from January 2007 through June 2009. Each SSO led to an unauthorized discharge of untreated sewage into a water of the State.

14. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on December 23, 2008. The NOV addressed the following: 1) a May 2008 Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD") discharge limitation violation; 2) failure to submit a noncompliance notification for the May 2008 discharge limitation violation; 3) failure to submit Total Kjeldahl Nitrogen (As N) (hereinafter "TKN") monitoring; 4) failure to submit the annual Municipal Water Pollution Prevention (hereinafter "MWPP") report that was due on or before May 31, 2008; and 5) failure to submit a timely and complete application for permit reissuance.

15. In response to the Department's December 23, 2008, NOV, the Permittee submitted

information showing that the May 2008 CBOD data submitted on the DMR included a typographical error and was not a discharge limitation violation. Therefore, a noncompliance notification was not required to be submitted to the Department. The Permittee also submitted information showing that a timely MWPP report had been received by the Department. In addition, the Permittee provided corrected DMRs that included the required TKN monitoring.

16. The Department and the Permittee have 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

17. The Permittee neither admits nor denies the Department's allegations but rather provides the following:

18. The Permittee contends that it did not received the letter sent by the Department on December 5, 2003, and was unaware of the Department's attempt to change the Permit expiration date back to August 31, 2005, as provided above in Paragraph six. The Permittee further contends that the Department could not change the Permit expiration date by transmitting said letter and that the Department was required by law to utilize the permit modification process to change the expiration date back to August 31, 2005.

19. The Permittee contends that the Department was entitiled to change the Permit expiration date back to August 31, 2005, if it had utilized the permit modification procedure to do so, and states that it would have consented to such change under the minor modification procedure. The Permittee contends it had no knowledge that the Department intended to change the Permit expiration date back to August 31, 2005, until after November 30, 2008.

20. The Department neither admits nor denies the Permittee's contentions provided above.

21. 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 that delayed compliance may have conferred 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 that 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: The Permittee violated its Permit by the submittal of late TKN data, failure to submit DMRs, discharging without a permit in the form of SSOs, the failure to submit a timely and complete application for permit reissuance, and discharging without a permit due to permit expiration. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B. THE STANDARD OF CARE: The Permittee failed 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 to the Permittee as a result of these violations.

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 in this Consent Order.

E. HISTORY OF PREVIOUS VIOLATIONS: Historical violations were considered in the development of the civil penalty amount.

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

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. The Department also considered the findings noted in paragraphs 6 and 7 above in the development of the civil penalty amount.

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 alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay the Department a civil penalty in the amount of $8,200.00 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. Alternatively, the Permittee may elect to perform a Supplemental Environmental Project (hereinafter "SEP") which has been approved by the Department to offset a portion of the civil penalty referenced in Paragraph A above. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a ratio of $1.00 for every $3.00 spent on the SEP but in no event shall the penalty be offset below $2,733.33. Should the Permittee elect to perform the SEP, the Permittee shall submit to the Department, a written report describing the

SEP, including the SEP implementation schedule. The written report and implementation schedule shall be submitted so that they are received by the Department within fifteen days of the effective date of this Consent Order. The SEP and implementation schedule may be implemented only if approved by the Department. Should the Permittee elect to perform the SEP and if the proposed SEP is approved by the Department, the Permittee shall submit a civil penalty of $5,466.67 so it is received by the Department within forty-five days of the effective date of this Consent Order. Adequate documentation of all expenses related to the SEP shall be submitted so that they are received by the Department for review and concurrence in determining the amount of the penalty to offset no later than thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Routine operating costs (i.e., those costs which would normally be incurred by the Permittee absent the requirements of the SEP) and costs related to routine compliance requirements, including the costs of complying with the requirements of Paragraphs D through K below, shall not be considered for penalty offset. Should the Permittee not offset the total amount of the penalty allowed, the remaining amount of the penalty required which is not offset, shall be due and payable within thirty days of the Department's notifying the Permittee of the remaining amount of penalty due to be paid. If the SEP is implemented, the Permittee shall submit monthly status reports to the Department documenting the actual accomplishments and implementation costs.

C. 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

D. The Permittee agrees to prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental DMR Reporting System Program (hereinafter, "E2 Program"), so that it is received by the Department no later than thirty days

after the issuance date of renewed NPDES Permit No. AL0022713. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee agrees to begin the electronic submittal of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee agrees to fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further agrees to abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

E. The Permittee agrees to submit to the Department, all completed Outfall 002-1 DMRs. The DMRs shall be submitted so that they are received by the Department no later than thirty days after the effective date of this Consent Order.

F. The Permittee shall submit an Engineering Report that identifies the potential causes of noncompliance and that summarizes an investigation of the changes necessary for the Permittee to implement to achieve compliance with the Permit. The Engineering Report shall be submitted so that it is received by the Department no later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation (i.e., a Compliance Plan). At a minimum, the Permittee's Engineering Report must address 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 must 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 must modify the Engineering Report so that it does accomplish compliance. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report within the timeframe listed in the Engineering Report.

G. 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. The Progress Reports shall be submitted so that they are received by the Department no later than six months after the effective date of this Consent Order and continuing every six months thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, the Permittee shall submit a written notice of noncompliance with each applicable imposed requirement. The notice of noncompliance shall be submitted so that it is received by the Department no later than fourteen days following each applicable due date contained in this Consent Order. Notices of noncompliance shall state the cause of noncompliance and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

H. The Permittee agrees to comply with all terms, limits, and conditions of NPDES Permit Number AL0022713 that expired on August 31, 2005, until such time as the reissued Permit becomes effective. The Permittee agrees to comply with all terms, conditions, and limitations of the reissued Permit beginning on the effective date of that Permit.

I. The Permittee shall submit to the Department, records of all unpermitted discharges of wastewater in the form of notifiable SSOs. The records shall be submitted so that they are received by the Department within five days of each event (i.e., upon every twenty-four hour period for notifiable SSOs lasting more than twenty-four consecutive hours and upon every occurrence of any notifiable SSO lasting less than twenty-four hours), of an unpermitted discharge in the form of a notifiable SSO. The reports shall contain at least the following information: i) the cause (known or suspected) of the discharge; ii) estimated volume; 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 stream, creek, lake, or pond receiving the unpermitted discharge either directly or via municipal separate storm sewer system (reference location by basin and street address and/or cross streets)); viii) land use location at site potentially impacted by release or spill; ix) corrective action plans to eliminate future discharges; x) name and title of person reporting the discharge; xi) weather conditions; and xii) a certification statement similar to those contained in DMRs concerning the accuracy of information.

J. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated 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, B, D, E, F, G, H, and I 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, B, D, E, F, G, H, and I, then the Department reserves the right to file a new action against the Permittee.

K. The parties agree that the cumulative stipulated penalties described in paragraph J 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 the timeframe listed in the Engineering Report, 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.

L. The Permittee agrees to submit to the Department, payment of stipulated penalties due for failure to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, B, D, E, F, G, H, and I contained herein. Furthermore, the Permittee agrees to submit payment of stipulated penalties to the Department so that they are received by the Department no later than thirty days following the completion of the milestone or requirement. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

M. 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 this Consent Order on behalf of the party represented, and to legally bind such party.

N. 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.

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

P. 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 this 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.

Q. 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.

R. 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.

S. 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.

T. 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 this Consent Order.

U. 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.

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

W. 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.

CITY OF TUSCALOOSA	ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
By: Walt Maddox	By:
Its: MAYOR	Its:
Date: 08-JULY-09	Date: