

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

CITY OF TROY)
)
)

UTILITY DEPARTMENT)
)
)

TROY WWTP)
)
)

NPDES PERMIT NO. AL0032310)
_____)

CONSENT ORDER NO. 98-105-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 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:

executed mailed
8/19/98 8/20/98

1. The City of Troy Utility Department (the Permittee) operates a waste treatment facility known as the Troy Wastewater Treatment Plant which discharges pollutants from a point source into Walnut Creek, waters of the State.

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 August 16, 1994 the Department issued Permittee's NPDES Permit Number AL0032310 (the Permit) which established limitations on the discharge of pollutants from such point source, designated therein as outfall number 001, into Walnut Creek. The Permit requires that the Permittee conduct Whole Effluent Toxicity (WET) testing of its effluent in accordance with Part IV., B. of the Permit and submit quarterly periodic Discharge Monitoring Reports (DMR's) to the Department describing the results of its effluent toxicity testing.

5. Quarterly Discharge Monitoring Reports submitted to the Department by the Permittee for the months of November 1994 through February 1998 indicate that the Permittee has failed the chronic whole effluent toxicity test in violation of part IV., B., 5. of NPDES Permit Number AL0032310 and that these violations are recurring.

6. The Permittee notified the Department on several occasions that Environmental Resources Analysts was working with the Permittee to find the causes of the violations and implement corrective action.

7. On January 31, 1996 the Permittee was issued a letter requiring the submittal of a draft TRE workplan with a schedule which gives initiation and completion dates of certain events in the workplan.

8. On April 21, 1997 the Permittee submitted to the Department a Toxicity Identification Evaluation (TIE) prepared by Environmental Resource Analysts, Inc. This TIE identified diazinon, a widely used pesticide, as the primary toxicant. Since there appears to be no practical way to remove diazinon, the Department advised the Permittee to investigate the source of the diazinon.

9. On September 18, 1997, staff members of the Environmental Indicators Section of Field Operations Division conducted a study to document the effects of the wastewater discharge on the instream macroinvertebrate community of Walnut Creek. This effort included aquatic macroinvertebrate sampling, toxicity testing and chemical analyses. The results of this study indicated the water quality of Walnut Creek below the Troy WWTP to be moderately impaired. The results indicated an invertebrate community negatively impaired. In addition the results of the short-term chronic toxicity test also appeared to substantiate these findings based on failure of the survival portion of the Ceriodaphnia dubia test. Although the study indicated diazinon was present at toxic levels in the stream samples below the wastewater treatment plant, the pesticide was not found in the effluent sample at the treatment plant. Other contaminants found in

the effluent that may have contributed to the toxicity were zinc and lead at concentrations above water quality standards for chronic toxicity.

10. On February 19, 1998, the Department received a report from the Permittee indicating that a source of diazinon within the sewer system could not be found. In addition, the report indicated that zinc was probably not the primary source of toxicity.

11. Although the Permittee does not agree with certain Findings in this Consent Order, it does agree in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest same. In an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Clean Water Act and its Permit, the Permittee has consented to the terms of this Consent Order.

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

13. 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(I), 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 the Permittee shall conduct a Toxicity Identification Evaluation (TIE), and a Toxicity Reduction Evaluation (TRE), to determine the source of toxicity and the methods(s) which will be used to attain compliance with whole effluent toxicity limits. All TRE toxicity tests will be performed using *Ceriodaphnia dubia*.

B. That within sixty (60) days after receiving this Order, the Permittee shall submit a draft TIE/TRE plan which includes investigations of the State Indirect Discharge (SID) permittees which might contribute to the failure of the toxicity test. During each regularly scheduled toxicity test, the Permittee shall conduct a chronic definitive toxicity test on industrial SID permittees which have the capability of contributing to the toxicity of the WWTP effluent. The industrial effluents will be treated aerobically with non-toxic municipal POTW mixed liquor to simulate biological treatment and dilution within the POTW. The choice of the 5 concentrations to be tested will be based on their ability to fully and accurately characterize the toxicity of the SID effluent. This TIE/TRE plan shall be consistent with the procedures and protocol in "Toxicity Reduction Evaluation Protocol for Municipal Wastewater Plants" (EPA/600/2-88/062) and associated EPA TIE protocols (EPA/600/6-91/005F), (EPA/600/R-92/080), (EPA/600/R-92/081), (EPA/600/6-91/034), (EPA/600/R-92/035), (EPA/600/R-92/036). The TRE plan shall include a schedule of activities necessary to attain compliance with whole effluent toxicity. When the above schedule is submitted and accepted by the Department, that schedule shall become a part of this Order as if fully set forth herein.

C. That within sixty (60) days after submittal of the TIE/TRE plan and schedule required above, and each 60 days thereafter until the compliance date, the Permittee shall submit a report on progress made toward attainment of compliance.

D. That the Permittee shall continue toxicity testing as required by the permit for the duration of this Order. Testing shall include diazinon analysis. However, no additional testing will be required for any "routine" test failure, which occurs while the TRE is underway.

E. The TRE shall be completed and compliance with effluent toxicity limits shall be attained not later than November 30, 2000.

F. That information required to be submitted by this Consent Order shall be sent by registered mail, or its equivalent, to the following address:

Alabama Department of Environmental Management
Water Division
Municipal Branch
P. O. Box 301463
Montgomery, Alabama 36130-1463

G. The issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against Permittee for the violations identified herein, where provided by law. This Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs; moreover, if the violations noted herein continue beyond the timeframes established by this Consent Order, then such future violations shall be addressed in other Administrative Orders as may be issued by the Department, litigation initiated by the Department or such other enforcement action as may be appropriate.

H. 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.

I. 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.

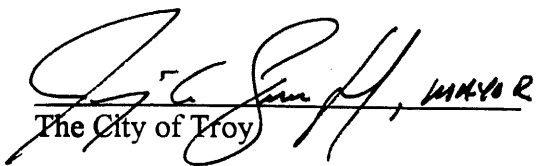
J. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

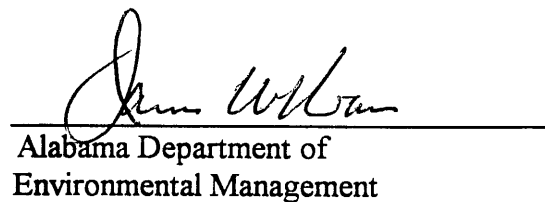
K. That, for purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Permittee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

L. That 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 and to

take all steps necessary to: (1) achieve full compliance with it's NPDES permit, (2) achieve full compliance with the Federal Water Pollution Control 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 Consent 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 Consent Order if future Orders, litigation or other enforcement action address new matters not raised in any previous Order.

M. By agreement of the parties, this Consent 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.


The City of Troy


Alabama Department of
Environmental Management

8-7-98
Date

19 Aug 98
Date