

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

LAUDERDALE COUNTY BOARD OF
EDUCATION

NPDES PERMIT NO. AL0057126

CONSENT ORDER NO. 99-082-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 OF FACT:

1. The Lauderdale County Board of Education (hereinafter, "the Permittee") operates a waste treatment facility known as the Brooks High School Wastewater Treatment Plant which discharges pollutants from a point source into Eight Mile Creek, a water 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.

executed *mailed*
4/15/99 4/16/99

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 (AWPCA), §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. On March 22, 1995, the Department issued NPDES Permit Number AL0057126 (the Permit) which established limitations on the discharge of pollutants from such point source, designated therein as outfall number 001, into Four Mile Creek. The Permit also required that the Permittee monitor its discharge and submit periodic Discharge Monitoring Reports to the Department describing the results of its monitoring.

5. Discharge Monitoring Reports submitted to the Department by the Permittee for the months of January through June and August through December 1996, every month of 1997, and February through May, and July through September of 1998, indicate that the Permittee has discharged pollutants from point source 001 into Four Mile Creek in violation of the limitations established in NPDES Permit Number AL0057126. These violations include chronic noncompliance with its BOD, TSS, NH₃-N, TRC, pH, and DO limits.

6. On November 10, 1997, the Department issued a Notice of Violation to the permittee. In response, the Permittee's engineer indicated that they would review the problem and should begin construction, if needed to achieve compliance, by March of 1998. To date the permittee has failed to make any improvements to achieve compliance.

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 (FWPCA) § 402, 33 U.S.C. § 1342, it is hereby Ordered:

A. The Permittee shall prepare and submit to the Department no later than July 1, 1999, a Compliance Plan which evaluates the causes of noncompliance and makes recommendations on how to achieve compliance with the FWPCA, AWPCA and NPDES Permit. The Compliance Plan shall:

1. Identify to the extent possible the causes of noncompliance;
2. Describe the corrective actions required to achieve compliance, including their estimated costs; and
3. Provide an expeditious schedule subject to the Department's concurrence.

Upon receiving the Department's concurrence, said schedule, including the dates for implementation of corrective actions necessary to achieve compliance with the FWPCA, AWPCA, and NPDES Permit, will automatically become part of this Order and subject to the stipulated penalties listed in paragraph E.

B. A registered professional engineer, licensed to practice in the State of Alabama, in accordance with ADEM Administrative Code, Chapter 335-6-3, shall prepare the compliance plan referred to in paragraph B above.

C. That the Permittee shall prepare and submit to the Department, during the months of January and July, a progress report describing in detail the Permittee's progress toward compliance with each provision of this Order. In addition, not later than 14 days following each applicable date in paragraph A hereof, the Permittee shall submit a written notice of compliance

or noncompliance with the requirements of that paragraph. Notices of noncompliance shall state the cause of noncompliance, corrective action taken, and a prediction of the Permittee's ability to comply with any remaining requirements of this Order.

D. That the Permittee will take all reasonably feasible interim measures or steps to minimize overflow violations and to mitigate the health and environmental effects of such violations during the interim period between the date of this Order and the completion of all scheduled corrective actions as required by this Consent Order.

E. That the Permittee shall pay to the Department, upon demand, stipulated penalties for each day it fails to meet any of the milestones 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

If after 90 days, the Permittee has yet to meet any milestone dates set in this Order, the Department may, at its discretion, proceed either to a unilateral order revoking this Consent Order and/or imposing additional fines, or may proceed directly to litigation to seek additional fines and/or injunctive relief.

F. 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.

G. 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.

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

I. 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.

J. 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 it's 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 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.

K. 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.

LAUDERDALE COUNTY BOARD OF
EDUCATION

By: Eckard Walker

DATE: 4/6/99

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Jim Wilson

DATE: 15 APRIL 99