

ONIS "TREY" GLENN, III  
DIRECTOR



BOB RILEY  
GOVERNOR

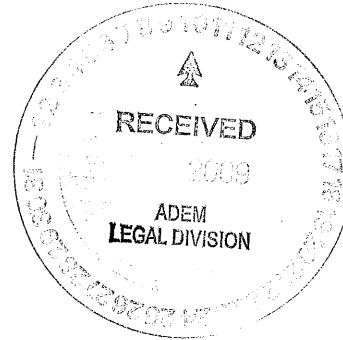
Alabama Department of Environmental Management  
adem.alabama.gov  
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

APR - 3 2009

CERTIFIED MAIL 91 1708 2133 3934 9411 1325  
RETURN RECEIPT REQUESTED

Mr. Joe Gardner  
Owner  
Pike Road Plantation  
6155 Troy Highway  
Pike Road, Alabama 36064

RE: Final Consent Order No. *09-061-CWP*  
NPDES Permit AL0059561  
Pike Road Plantation WWTP  
Montgomery County (101)



Dear Mr. Gardner:

Please find enclosed ADEM Consent Order No. 09- 061-CWP which requires you to take certain actions at the Pike Road Plantation WWTP in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Pike Road Plantation. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

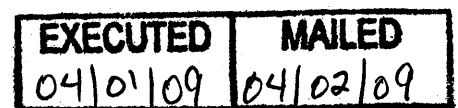
James E. McIndoe, Chief  
Water Division

JEM/sps

File: ECO/9637

Enclosure

cc: Olivia Rowell, ADEM Office of General Counsel  
Vernon H. Crockett, ADEM NPDES Enforcement Branch  
Samantha P. Sims, ADEM NPDES Enforcement Branch



Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (Fax)

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (Fax)

Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (Fax)

Mobile - Coastal  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Pike Road Plantation )

Pike Road Plantation WWTP )

Pike Road, Montgomery County, AL )

NPDES Permit No. AL0059561 )

Consent Order No. 09-061-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Pike Road Plantation (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 the Pike Road Plantation Waste Water Treatment Plant (hereinafter "WWTP"). The WWTP is located in Pike Road, Montgomery County, Alabama.
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 issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0059561 to the Permittee on April 6, 2005, establishing limits on the discharge of pollutants from such point source, designated therein as outfall

number 001-1 from the WWTP to an Unnamed Tributary (UT) to Catoma Creek, a water 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. 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. DMRs submitted to the Department by the Permittee for the months of December 2006 through May 2008, indicated that the Permittee had discharged pollutants into an UT to Catoma Creek in violation of the discharge limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Department initiated prior enforcement action in an effort to resolve the Permittee's permit violations. On January 17, 2007 the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee. Warning Letters were issued to the Permittee in February and August of 2005. The Department issued Consent Order (No. 02-088-CWP) to the Permittee in 2002. However, the above-stated enforcement actions were unsuccessful at resolving the Permit violations.

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

8. 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 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**

9. 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 violations, 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 violations 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 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 exceeding weekly and monthly average permit limitations for Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD"), Total Suspended Solids (hereinafter "TSS"), and Total Ammonia as Nitrogen (hereinafter "NH3N"). Violations also consisted of exceeding the daily maximum discharge limitation for pH and Fecal Coliform (hereinafter "FC"), and the minimum percent removal limitations for TSS. All parameters violated, with the exception of NH3N are considered conventional pollutants; NH3N is considered a toxic pollutant. 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:** The Permittee failed to properly maintain its wastewater treatment system to ensure compliance with permit limitations and conditions.

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 described herein.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a history of similar violations over a period of time prior to that addressed by the Order. The Permittee was issued a NOV on January 17, 2007, Warning Letters were issued in February and August of 2005, and a Consent Order was issued in 2002. The past enforcement actions were unsuccessful at resolving the Permit violations.

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

## **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.), including previous penalty amounts assessed for similar violations, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged 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 \$4,400.00 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. 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 days after receipt of this Order, 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 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. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations provided in the Engineering Report in accordance with the accepted schedule presented in the Compliance Plan and as required by this Order.

D. 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. Semi-Annual Progress Reports are to be submitted to the Department beginning six months after issuance of this Order and continuing every six months thereafter that the Permittee's performance of the obligations under this Order remain incomplete. In addition, not later than fourteen days following each applicable due date contained in this 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 and the corrective action taken and shall also describe the Permittee's ability to comply with any remaining requirements of this Order.

E. No later than 365 days after the effective date of this Consent Order, the Permittee agrees to comply with the CBOD, TSS, TSS Percent Removal, NH<sub>3</sub>N, FC, and pH limitations of NPDES Permit Number AL0059561. The Permittee further agrees to comply with all other terms, conditions, and limitations of its NPDES Permit immediately upon receipt of this Order.

F. The Permittee agrees that, after the effective date of this Consent Order, it will pay stipulated civil 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, C, and D 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:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
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, C, and D, then the Department reserves the right to file a new action against the Permittee.

G. The parties agree that the cumulative stipulated penalties described in paragraphs F and H above shall under no circumstances exceed \$16,000.00. Once stipulated penalties of \$16,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur 365 days after the effective date of this Consent Order, as stated in paragraph E above, 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.

H. The Permittee agrees that payment of stipulated penalties due for any violations stated herein shall be due not later than the 28<sup>th</sup> 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 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 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 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.

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 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.

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 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 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 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.

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.

PIKE ROAD PLANTATION

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: [Signature]

By: [Signature]

Its: [Signature]

Its: Director

Date: 01/02/09

Date: 4/1/09

**CERTIFICATE OF SERVICE**

I, Ashlee B. Nichols, hereby certify that

I have this date served the foregoing Administrative Order on  
Joe Gardner by regular United States Mail, properly  
addressed and postage prepaid to:

**Mr. Joe Gardner, Owner  
Pike Road Plantation  
6155 Troy Highway  
Pike Road, AL 36064**

Done this 3rd day of April,  
2009.

Ashlee Nichols  
Name

**Attachment 1**  
**Pike Road Plantation WWTP - AL0059561**

Monitoring Period	Parameter	Result	Limit	Units	Limit Type
December 2006	NITROGEN AMMONIA TOTAL N	1.41	1.25	lbs/day	Monthly Average
	NITROGEN AMMONIA TOTAL N	6.75	1.5	mg/l	Monthly Average
	NITROGEN AMMONIA TOTAL N	2.74	1.87	lbs/day	Weekly Average
	NITROGEN AMMONIA TOTAL N	13.1	2.2	mg/l	Weekly Average
	PH	9.48	8.5	SU	Daily Maximum
January 2007	NITROGEN AMMONIA TOTAL N	4.24	2.2	mg/l	Weekly Average
April 2007	BOD CARBONACEOUS WINTER	6.27	6	mg/l	Monthly Average
	BOD CARBONACEOUS WINTER	18.8	9	mg/l	Weekly Average
	NITROGEN AMMONIA TOTAL N	1.84	1.5	mg/l	Monthly Average
	NITROGEN AMMONIA TOTAL N	3.5	2.2	mg/l	Weekly Average
	PH	8.97	8.5	SU	Daily Maximum
May 2007	PH	9.52	8.5	SU	Daily Maximum
October 2007	PH	8.54	8.5	SU	Daily Maximum
November 2007	NITROGEN AMMONIA TOTAL N	2.2	1	mg/l	Monthly Average
	NITROGEN AMMONIA TOTAL N	4.78	1.5	mg/l	Weekly Average
December 2007	BOD CARBONACEOUS WINTER	22.3	9	mg/l	Weekly Average
	NITROGEN AMMONIA TOTAL N	4.68	1.5	mg/l	Monthly Average
	NITROGEN AMMONIA TOTAL N	6.48	2.2	mg/l	Weekly Average
	TSS	77.6	30	mg/l	Monthly Average
	TSS	41.2	37.5	lbs/day	Weekly Average
	TSS	240	45	mg/l	Weekly Average
January 2008	NITROGEN AMMONIA TOTAL N	4	1.5	mg/l	Monthly Average
	NITROGEN AMMONIA TOTAL N	10.1	2.2	mg/l	Weekly Average
	TSS	47.3	30	mg/l	Monthly Average
	TSS	96	45	mg/l	Weekly Average
March 2008	FECAL COLIFORM	14500	2000	#/100 ml	Daily Maximum
April 2008	BOD CARBONACEOUS WINTER	15.2	9	mg/l	Weekly Average
	PH	8.76	8.5	SU	Daily Maximum
May 2008	PH	8.79	8.5	SU	Daily Maximum