

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

Francis Cosby, Jr. d.b.a.
OVERLOOK HILLS SEWAGE SYSTEM
Selma, Dallas County Alabama

NPDES Permit No. AL0056677

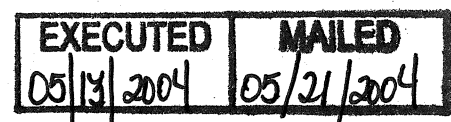
CONSENT ORDER

NO. 04-072-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, and the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Francis Cosby, Jr. d.b.a. Overlook Hills Sewage System (the Permittee) operates a wastewater treatment facility (lagoon) for treating domestic wastewater from Overlook Hills Housing Area located near Highway 22, Dallas County, Alabama. The facility discharges pollutants from such point source into an unnamed tributary



to Beech 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.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, 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. §§ 1342 *et seq.* 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 July 17, 1995, pursuant to 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, the Department issued the Permittee's NPDES Permit Number AL0056677 (hereinafter "the Permit") which established limitations on the discharge of pollutants from such point source, designated therein as outfall number 001, into a tributary of Beech Creek. On June 15, 2000, the Department reissued the Permit. The new permit contained discharge limits that were more restrictive than the previous permit. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports 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. On June 30, 2003, the inspection conducted by the Department noted deficiencies related to operation and maintenance of the Permittee's facility. The Permittee failed to respond as requested in the inspection letter of July 8, 2003.

6. Discharge Monitoring Reports submitted to the Department by the Permittee indicated that the Permittee has discharged pollutants from such point source into the aforementioned tributary to Beech Creek in violation of the limitations established in the Permit as follows:

March 2003

Carbonaceous Biological Oxygen Demand (CBOD) (lb/day - monthly average, weekly maximum)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

April 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

May 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean, daily maximum)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

June 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean, daily maximum)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

July 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean, daily maximum)

August 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum, lb/day - monthly average)

Fecal Coliform (geometric mean (no data on DMR), daily maximum)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

September 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

October 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum)

November 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum).

December 2003

Carbonaceous Biological Oxygen Demand (CBOD) (mg/l - monthly average, weekly maximum)

Fecal Coliform (geometric mean)

Total Ammonia Nitrogen (as N) (mg/l - monthly average, weekly maximum).

7. Compliance History - Discharge Monitoring Reports submitted to the Department by the Permittee for the months January 2001 through April 2001 indicated that the Permittee discharged pollutants from the aforementioned point source into a tributary of Beech Creek in violation of the limitations established in

NPDES Permit Number AL0056677. On September 20, 2001, a Notice of Violation was sent to the Permittee for failure to meet Permit limits. The Department received a response from the facility on October 31, 2001.

8. The Permittee neither agrees nor disagrees 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 Consent Order.

9. 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.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That, not later than 45 days after the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of \$5,100. for the violations cited herein. In lieu of civil penalty payment, the Permittee may perform a Supplemental Environmental Project (SEP). Said SEP would consist of the construction of a pumping station and sewer line and making

connection to a Publicly Owned Treatment Works (POTW). The cost of the SEP is estimated at \$90,000. Connection to the POTW shall be completed within 365 days from the date of execution of this Consent Order. The purpose of the SEP is to make connection to the POTW, therefore, eliminating the discharge to the tributary to Beech Creek. If the SEP is not completed within 365 days, the Permittee shall automatically pay to the Department the civil penalty of \$5,100 no later than 45 days after receipt of such notice from the Department, and also shall complete the SEP. Should the Permittee elect to perform the SEP in lieu of paying a civil penalty, the Permittee shall inform the Department of its election in writing no later than 45 days after the effective date of this Consent Order. Should the SEP fail to be accomplished within the 365 days, the permittee shall achieve compliance with discharge limitations contained in NPDES Permit Number AL0056677 within 730 days from the date of execution of this Consent Order.

B. That, commencing immediately after the effective date of this Consent Order, the Permittee shall comply with all the monitoring, reporting and discharge limitation provisions of NPDES Permit Number AL0056677 to the extent not inconsistent with this Order.

C. That, commencing immediately after the effective date of this Consent Order, the Permittee shall not discharge pollutants from the above-mentioned point source (Outfall 001) at Overlook Hills Subdivision in excess of the following discharge limitations:

DISCHARGE LIMITATIONS

INTERIM DISCHARGE LIMITATIONS

Pollutant	Ave. monthly	Ave. weekly	Conc., Monthly	Conc., Weekly
<u>Parameter</u>	<u>lbs/day</u>	<u>lbs/day</u>	<u>mg/L</u>	<u>mg/L</u>
CBOD5	10.8	16.2	20	30
NH3-N	1.6	2.4	3	4.5
Fecal Coliform			4,000	4,000

D. That, within 90 days after the effective date of this Consent Order, the Permittee shall conduct and complete a thorough investigation of the existing treatment works and maintenance and operating procedures of the facility. The purpose of the investigation shall be to determine if any changes or additions are needed to achieve compliance with discharge limitations contained in NPDES Permit Number AL0056677. At a minimum, the Permittee shall consider each of the following in making that determination: the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment works. No later than 90 days after the effective date of this Consent Order, the Permittee shall submit an engineering report to the Department detailing the complete results of that investigation.

E. That, no later than 120 days after the effective date of this Consent Order, the Permittee shall prepare and submit for the Department's review and comment a Compliance Plan based upon the report referred to in paragraph D above. The Compliance Plan shall identify the causes of the violations of NPDES

permit effluent limitations and describe corrective actions to achieve compliance with NPDES permit effluent limitations. A professional engineer licensed in the State of Alabama shall prepare those portions of the compliance plan referred to above which relate to the identification of the causes of noncompliance and the corrective measures required to achieve compliance and shall affix his/her seal and signature to such portions of the plan in accordance with ADEM Admin. Code R. 335-6-3. If the Department determines through its review of the submitted Compliance Plan and engineering report plan that the Compliance Plan is not sufficient to accomplish compliance with NPDES permit effluent limitations, it shall be modified so that it does accomplish compliance. Modifications to the Compliance Plan, if required, shall be submitted no later than 30 days after receipt of the Department's comments.

F. That the Permittee shall comply with all terms, conditions, and limitations of the permit no later than 730 days after the effective date of this Consent Order.

G. That the Permittee shall prepare and submit to the Department a progress report describing in detail the Permittee's progress towards compliance with each provision of this Consent Order on or before January 31st and July 31st of each year that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, not later than 14 days following each applicable due date that is contained in this Consent Order, 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 the Permittee's ability to comply with any remaining requirements of this Consent Order.

H. That for every day after the effective date of this Consent Order in which an action required by this Consent Order is not fully implemented as required by the terms of this Consent Order, the Permittee shall pay to the Department a stipulated penalty of \$100.00 per day for the first thirty (30) days. Thereafter, the penalty shall increase to \$200.00 per day for the 31st through the 60th day inclusive and \$300.00 per day for the 61st through the 90th day inclusive in which violations occur. Payment of any stipulated penalty due under this Consent Order shall be due not later than 30 days after the due date of the action and every 30 days thereafter, if necessary. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required, and the stipulated penalty is due and payable to the Department within 30 days after the due date of the action and each 30 days thereafter, if necessary, regardless of whether demand for the stipulated penalty has been received by the Permittee.

I. For every violation of the limits listed in Paragraph C, the Permittee shall pay to the Department the sum of \$100.00 for each and every violation after the effective date of this Consent Order.

J. That the cumulative stipulated penalties described in paragraphs H and I above shall under no circumstances exceed \$18,000. Once stipulated penalties of \$18,000 are due to the Department and violations continue to occur, or, should violations occur after 820 days after the effective date of this Consent Order, the

Department shall be free to file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to collect said penalties and enforce compliance of this Consent Order.

K. That all penalties due pursuant to this 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

L. 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.

M. 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.

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

O. 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. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable control of the Permittee) and which delays or prevents performances 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 30 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 specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

P. 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 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 this Consent Order.

Q. 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 Alabama Water Pollution Control Act, and (3) comply with all other conditions of this Consent Order.

R. That, 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 Permittee does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

OVERLOOK HILLS SEWAGE SYSTEM

Francis Cook Jr
(Name of Authorized Representative)

Owner
Title

Date Signed: March 25, 2004

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

James W. Warr
James W. Warr

Director

Date Signed: 13 May 2004