

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**THE GOODWATER WATER WORKS
AND SEWER BOARD**

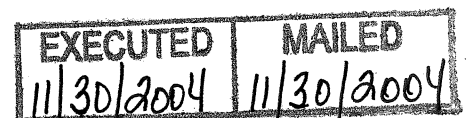
PWSID # 0000351

**CONSENT ORDER
NO. 05-013-CDW**

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 Safe Drinking Water Act, *Code of Alabama* (1975), §§ 22-23-30 through 22-23-53, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, 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. The Goodwater Water Works and Sewer Board ("the Permittee") owns and operates the Goodwater Water Treatment Plant ("WTP"). Pursuant to ADEM Admin. Code R. 335-1-1-.03, the Goodwater Water Treatment Plant is classified as a Grade III surface water treatment facility. The source of raw water utilized by the Goodwater WTP is Hatchet Creek.
 2. The Permittee was issued Water Supply Permit No. 98-760 by the Department.
- The Permit authorizes the operation of a public water system as that term is defined by *Code of*



Alabama (1975), § 22-23-31. The system is also a community water system as that term is defined by *Code of Alabama* (1975), § 22-23-31.

3. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to *Code of Alabama*, 1975, §22-22A-1 through 22-22A-16, as amended.

4. *Code of Alabama* (1975), § 22-22A-4(n), as amended, provides that the Department is the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the federal *Safe Drinking Water Act*, 42 U.S.C. §§ 300f through 300j-26. Additionally, the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act, *Code of Alabama*, 1975, §§ 22-23-30 through 22-23-53, as amended.

5. ADEM Admin. Code Rs. 335-7-6-.04 through 335-7-6-.09 require each water system with a surface water source to perform a source water assessment for the water source by February 6, 2003.

6. In order to resolve a number of problems experienced by the WTP, the Permittee decided to close the Goodwater WTP and disconnect the same from the Goodwater distribution system. The Permittee further decided to connect to the City of Alexander City water system in order to supply water for its customers. This action would negate the need for a source water assessment.

7. On December 18, 2003, the Permittee entered into Consent Order No. 04-020-CDW with the Department, agreeing to connect to the City of Alexander City water system no

later than September 1, 2004, and to close the Goodwater WTP and disconnect the same from the Goodwater distribution system by October 15, 2004.

8. As of the date of the execution of this Consent Order, the Permittee has not progressed sufficiently with the actions necessary to achieve timely compliance with the terms of Consent Order No. 04-020-CDW, and the Permittee will be faced with the choice of closing its system and creating a public health emergency because of the lack of potable water available to its customers or violation of the Consent Order.

9. Based upon the foregoing, the Department has determined that revocation of Consent Order No. 04-020-CDW and issuance of a Consent Order with a new compliance schedule and additional civil penalties is appropriate to allow the Permittee to continue to supply drinking water to its customers until it has been able to complete the actions necessary to connect with the Alexander City water system.

10. The Permittee neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, the Permittee consents to the terms of this Consent Order.

11. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations cited hereinabove.

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), 22-23-43, and 22-23-49, as amended, and with the consent of the Permittee, it is hereby ORDERED:

(A) That Consent Order # 04-020-CDW is hereby revoked in its entirety, and this Consent Order shall take its place.

(B) 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 \$12,000 for the violations cited herein.

(C) 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

All checks shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

(D) That the Permittee shall comply with the following schedule:

January 1, 2005	Goodwater construction financing obtained for potential cost overruns, EPA approval for construction received, Bid opening
January 15, 2005	Begin Construction
June 30, 2005	Construction Complete
July 31, 2005	Closure of water treatment plant

(E) 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.

(F) 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.

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

(H) 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 defense 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 10 days prior to the original anticipated completion date. If the Department, after review of the extension requests, 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.

(I) 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.

(J) 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.

GOODWATER WATER WORKS
AND SEWER BOARD

Frank Shon
(Name of authorized representative)

Date Signed: 9-21-04

ALABAMA DEPT. OF
ENVIRONMENTAL MANAGEMENT

Jim Warr
JAMES W. WARR, DIRECTOR (Acting)

Date Signed: 30 Nov 2004