

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

PLANTATION POINTE DEVELOPMENT

CONSENT ORDER NO. 99-009-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, the Department makes the following FINDINGS:

1. The Plantation Pointe Development operated a waste treatment facility known as the Plantation Pointe Wastewater Treatment Plant in Jackson County, Alabama.

2. The Alabama Department of Environmental Management 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

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provisions of the Alabama Water Pollution Control Act, §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. On September 13, 1994, the Department approved the Phase I Land Application Report to spray irrigate a golf course with treated effluent from the Plantation Pointe Wastewater Treatment Plant.

5. The Department received an NPDES permit application from Mr. Don W. Croft, (the Applicant) President of the Plantation Pointe Development.

6. A Departmental letter dated September 13, 1994, instructed the Applicant to submit the required Phase II Land Application Report. This report has not been submitted.

7. The Applicant did not submit engineering plans and specifications before starting construction, as required by ADEM Administrative Code 335-6-3-.05.

7. Due to the deficiencies noted above, the Department has not issued the Applicant an NPDES permit.

8. In 1998, the Applicant sold the Plantation Pointe Development to the City of Scottsboro Parks and Recreation.

9. On June 11, 1998, an inspection by the Department revealed that Plantation Pointe Wastewater Treatment Plant was operational and discharging pollutants to the groundwater, a water of the State, via land application to a golf course, without an NPDES permit.

10. The Applicant has realized an economic benefit as a result of these violations by saving the cost of monthly laboratory analyses of its treatment plant's discharge, the cost of groundwater monitoring, and the cost of employing a certified wastewater treatment plant operator.

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 within (thirty) 30 days from the date of receipt of this Order, the Applicant shall pay to the Department a civil penalty in the amount of \$4,000.

B. 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.

C. 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.

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

E. For purposes of this Consent Order only, the Applicant 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 Applicant also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Applicant shall be limited to the defenses of

Force Majeure, compliance with this Agreement, and physical impossibility.

F. 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 Applicant 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 the Clean Water Act, and (2) 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 Applicant 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.

G. 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.

PLANTATION POINTE
DEVELOPMENT

By: Don W. Croft Pres.
DATE: 9/17/98

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Jim Wilkin
DATE: 14 Oct 98