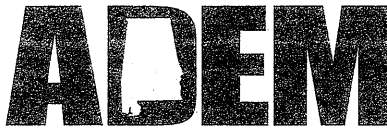


ONIS "TREY" GLENN, III
DIRECTOR

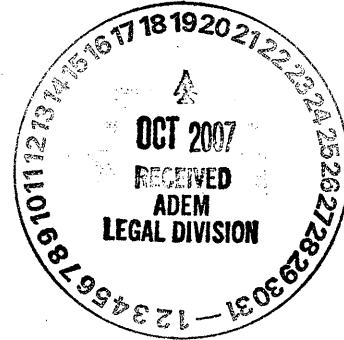


Alabama Department of Environmental Management
adem.alabama.gov
1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

October 18, 2007

CERTIFIED MAIL #7005 1820 0003 1875 7204
RETURN RECEIPT REQUESTED



Mr. Dusty McDanal, Utility Supervisor
Town of Pine Hill
Post Office Box 397
Pine Hill, AL 36769

Re: Pine Hill Lagoon
NPDES Permit No. AL0062731
Wilcox County
Consent Order No. 08-009-CWP

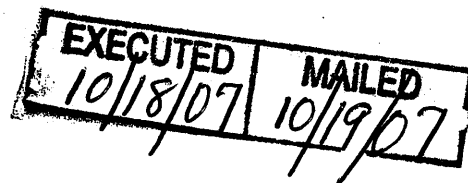
Dear Mr. McDanal:

Please find enclosed ADEM Consent Order No. 08-009-CWP which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of both the Town of Pine Hill and the Department. Please note that the assessed civil penalty is due within 45 days.

If you have any questions, please do not hesitate to contact Mr. James W. Grassiano at (334) 271-7801.

Sincerely,

James E. McIndoe, Chief
Water Division



Enclosure

cc: Olivia Rowell, ADEM, Office of General Counsel
Glenda Dean, ADEM Water Division
ADEM – Public Affairs Office
Cesar Zapata, EPA



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:)

Town of Pine Hill)

Pine Hill Lagoon)

Pine Hill, (Wilcox County), AL)

NPDES Permit No. AL0062731)

Consent Order No. 08-009-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Town of Pine Hill (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 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 a wastewater treatment facility known as the Pine Hill Lagoon located on Alabama Highway 5 West in Pine Hill, Wilcox County, Alabama. The wastewater treatment facility discharges pollutants from a point source into the groundwater table and to Cub Creek. Both groundwater and Cub Creek are defined as waters of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (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, §§ 22-22-1 to 22-22-14, Ala. Code (2006 Rplc. Vol.).

4. Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.) provides that "[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the [Department] in writing for a permit and must obtain such permit before discharging such pollution.

5. On January 1, 2002, the Department issued NPDES Permit Number AL0062731 (hereinafter "the Permit") to the Permittee, establishing limitations on the discharge of pollutants from a point source, designated therein as outfall number 001-1, to groundwater. The Permit was set to expire on December 31, 2006. However, the Permittee applied for re-issuance of the Permit in a timely manner on May 31, 2006. As a result of the timeliness for submittal of the application for reissuance, the expiration date of the Permit was administratively extended. 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.

6. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from outfall 001-1 into the aforementioned groundwater in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

7. The Department conducted NPDES Compliance Inspections (hereinafter "CEIs") at the Pine Hill lagoon in 2005 and 2007. These inspections occurred on October 28, 2005 and February 7, 2007. At the time of both inspections, the Department identified the existence of unpermitted direct discharges from the Pine Hill Lagoon to Cub Creek, a water of the state. The Permittee is not presently authorized to discharge treated wastewater to any water of the state except groundwater via the two off-site spray fields. Also at the time of each inspection, the Department noted that there were operational problems at each spray field. Specifically, the spray fields were hydraulically overloaded, and the Department identified unpermitted surface water discharges from the spray fields. The unpermitted discharges from the spray fields were determined to be unpermitted conveyances to an un-named tributary of Cub Creek.

8. For the months of September 2005 through April 2007, the Permittee has reported 17 unpermitted Sanitary Sewer Overflows (hereinafter "SSOs"). The Department notes that of these seventeen reported SSOs, it appears that eight were not SSOs but were reported to be unpermitted discharges from the Pine Hill Lagoon to Cub Creek. The remaining nine events appear to have been SSOs and, as such, were unpermitted discharges into a waster of the state. It appears that the Permittee began reporting unpermitted discharges from the lagoon upon the date of the most recent CEI. Overall, the Department understands that the unpermitted discharge from the lagoon to

Cub Creek has been ongoing, at least since the beginning of 2007. The list of reported SSO events is listed in Attachment 2.

8. The existing NPDES Permit had an expiration date of December 31, 2006. The Permittee applied for re-issuance in a timely manner and hence the expiration date has been administratively extended. However, the application did not address the ongoing unpermitted discharges.

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

10. 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 above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

11. 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 violation, 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 violation 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 be a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The violations consisted of unpermitted discharges in the form of SSOs, an ongoing direct unpermitted discharge from the lagoon, and unpermitted discharges from the spray fields that were conveyed to a water of the state. In addition, there have been limited violations of established permit conditions. Effluent violations consisted of exceeding the monthly average permit limitation for percent removal of Total Suspended Solids. The Department has no evidence of irreparable harm to the environment or any threat to the health and safety of the public as a result of the violations stated herein.

B. THE STANDARD OF CARE: The Permittee failed to maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit. In addition, the Permittee failed to address unpermitted discharges to waters of the state.

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 in this Order.

E. HISTORY OF PREVIOUS VIOLATIONS: Violations of a similar nature and degree have been reported in the time prior to the period addressed by this Consent Order. The Department issued a Warning Letter on March 5, 2007 as a result of the CEI inspection findings and the identification of unpermitted discharges.

F. THE ABILITY TO PAY: Based upon information available to the Department, the Department believes the Permittee has a limited ability to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and in the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

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.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations cited 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 \$20,100.00 in settlement of 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's 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 the effective date of this Consent Order, an Engineering Report that includes a schedule for implementation (i.e., Compliance Plan). The Engineering Report must identify the potential causes of noncompliance and it must summarize the Permittee's investigation of the changes it must implement to achieve compliance with NPDES Permit Number AL0062731. At a minimum, the Permittee must consider each of the following in making its determination: the need for changes in maintenance and operating procedures, the need to identify and resolve potential infiltration and inflow concerns, the need to modify existing treatment system facilities and collection system components, and the need for new or additional treatment facilities 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 report is not sufficient to accomplish compliance with the Permit, then the Permittee shall modify the report so that it does

accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to ADEM no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations made in the Engineering Report within 912 days after the effective date of this Consent Order.

D. Within thirty days from the effective date of this Order, the Permittee will submit a plan for monitoring the effects of its unpermitted discharges on the receiving stream(s). Specifically, the plan must address monitoring of the receiving stream both upstream and downstream of any illicit discharges from the lagoon and spray fields. The plan is subject to review and approval by the Department. Modifications to the plan, if necessary, must be made within fifteen days of receipt of written comments by the Department. The Permittee is to implement the plan and begin monitoring within fifteen days of Departmental approval. In addition, within thirty days from the effective date of this Order the Permittee is to initiate weekly testing of any effluent being discharged from the lagoon to Cub Creek. The parameters monitored and collection methods shall be consistent with those monitored under the NPDES permit. The effluent and receiving monitoring results shall be reported with the monthly DMRs.

E. The Permittee agrees to prepare and submit Semi-Annual Progress Reports to the Department describing in detail the Permittee's progress towards completing the items presented in the Compliance Plan. Such reports shall be submitted beginning six months after the effective date of this Consent Order and shall continue to be submitted every six months thereafter that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, within fourteen days of each applicable due date contained in this Consent Order, the Permittee must submit a written

notice of compliance with the requirements stated herein. If compliance is not or will not be achieved by each applicable due date, then the Permittee must submit a Notice of Non-compliance within fourteen days following each applicable due date outlined herein. Notice of Non-Compliance shall state the cause of noncompliance, the corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order.

F. No later than 910 days after the effective date of this Consent Order, the Permittee agrees to comply with the TSS Percent Removal limitations of Permit. Within 1095 days after the effective date of this Consent Order, the Permittee also agrees to eliminate all unpermitted discharges into waters of the State from the WWTP and the spray fields. The Permittee further agrees to comply with all other terms, conditions, and limitations of its Permit immediately upon the effective date of this Consent Order.

G. The Permittee agrees that, after the effective date of this Consent Order, for every violation of the TSS Percent Removal Permit effluent limitations, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0062731, the Permittee shall pay to the Department the sum of \$150.00 for each and every monthly average violation.

H. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated 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, D, E, and G contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, 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 ninety days after the required dates found in paragraphs A, C, D, E, and F the Department reserves the right to file a new action against the Defendant.

I. The parties agree that the cumulative stipulated penalties described in paragraphs G and H above shall under no circumstances exceed \$24,000. Once stipulated penalties of \$24,000 are due to the Department and violations continue to occur, or, should violations continue to occur after 1095 days after the effective date of this Consent Order, 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 any other court of competent jurisdiction to enforce compliance with this Consent Order.

J. The Permittee agrees that payment of stipulated penalties due for violations of effluent limitations under this Consent Order shall be due not later than the 28th 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.

K. The Permittee agrees that, upon each SSO event, the Permittee shall prepare and submit an SSO Report to the Department. The report shall contain at least the following information: i) the cause (known or suspected) of the discharge; ii) estimated volume (if determinable); iii) description of the source (e.g., manhole, pump station); iv) identification of the collection system that overflowed; v) location, by street

address or any other appropriate method; vi) date of event; vii) ultimate destination of the flow (e.g., name of surface waterbody, land use location, name of surface waterbody via municipal separate storm sewer system (reference location by basin and street address and/or cross streets)); viii) corrective actions of plans to eliminate future discharges; ix) name and title of person reporting the discharge; x) weather conditions; and xi) a certification statement similar to those contained in Discharge Monitoring Reports, concerning the accuracy of information. The written SSO report is to be submitted to the Department within five days of the Permittee's becoming aware of the event.

L. 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.

M. 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.

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

O. 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 are beyond the reasonable control of the Permittee, including its contractors and consultants, which 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 that 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.

P. 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 which would constitute possible violations not addressed in this Consent Order, then such future violations may

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. 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.

R. 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.

S. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

T. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or 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.

U. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

V. 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.

TOWN OF PINE HILL

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: <u>Harry D. Mason</u>	By: <u>[Signature]</u>
Its: <u>MAYOR</u>	Its: <u>Director</u>
Date: <u>AUG. 17, 2007</u>	Date: <u>10/18/07</u>

Attachment 1

AL0062731

PINE HILL LAGOON

DMR Value Limit

Units

Averaging Time

Outfall ID: 0011

May, 2006

SOLIDS SUSP PERCENT

1	62.5	65	Percent	Monthly Average
---	------	----	---------	-----------------

SSO Reports

Reports Between September 2005 and June 2007

County Name Wilcox

Facility Name: PINE HILL LAGOON

Permit Number: AL0062731

Facility Type: Minor

ADEM Area: Torbert

Caller	Caller Phone #	Oral Report Date and Time	Overflow Date and Time	Written Report Date	Volume SSO	Length of SSO	Location	Destination SSO	Cause	Corrective Actions Taken	Others Notified
			11/24/2005		43000 gal	12 hr	west front st	cub creek	pump failure	worked on pumps one back in service 11-24-05 called pump repair service	
			12/19/2005		10,000 gallons	2 to 3 days	40 Frank Smith Rd	Cub Creek	Plastic bags and grease in mainline at manhole.	Called Roto-Rooter to clear blockage. Treat lines with bacteria to eliminate grease.	
			12/20/2005		20,000 gallons	10 days	520 Haddox Dr.	Cub Creek	Broken sewer line due to erosion.	Ordered pipe and fittings to splice in broken places. Went and picked up materials, used backhoe to clean out a way to work in area and make repairs. Stopped SSO. Engineer to develop plans for sewer rehabilitation at main line in area.	
			7/1/2006		57,000 gallons	22 hours	West Front Street	Cub Creek	Heater overloads on starters tripped.	Reset starters. Pumps working ok.	
			7/2/2006		52,000 gallons	20 hours	West Front Street	Cub Creek	Heater overloads on starters tripped	Called electric. Replaced defective overloads. Pumps working ok.	
			1/4/2007		150,000 gal/day	Ongoing	Sewer Lagoon, Hwy 5 South	Cub Creek	Excessive rainfall. Overflow at old discharge pipe this would not be raw sewage	Walking sewer lines looking source of infiltration into system. Pumping to sprayfield everyday. (Have also been verbally reporting this problem. Have submitted an SSO form for each individual day thru January 25, 2007.)	

	1/26/2007	240,000 gal	ongoing through 2/2/07	Sewer Lagoon, Hwy 5 South	Cub Creek	Infiltration. Overflow at old discharge pipe this would not be raw sewage	rehab manholes - I have talked with ADEM on possible amendment to permit. Seasonal discharge at old pipe, talked with engineers on rehab project.
	2/3/2007	100,000 gal	ongoing through 2/7/07	Sewer Lagoon, Hwy 5 South	Cub Creek	Infiltration. Overflow at old discharge pipe this would not be raw sewage	Engineers notified to look at I&I problem - Solutions rehab manholes - talked with ADEM on permit changes.
	2/8/2007	100,000 gal	ongoing through 2/11/07	Sewer Lagoon, Hwy 5 South	Cub Creek	Infiltration. Overflow at old discharge pipe this would not be raw sewage	Engineers notified to look at I&I problem - Solutions rehab manholes - talked with ADEM on permit changes.
	2/23/2007	220,000+ gallons	ongoing through 2-26-07	Sewer Lagoon- Hwy 5 South, Pine Hill	Cub Creek	infiltration	engineers looking for solution
	2/27/2007	150,000 gallons	24 hrs a day(ongoing)	Hwy 5 South	Cub Creek	Infiltration sewage	
	3/3/2007	30,000 gallons	24 hrs	4455 Broad St	Cub Creek		
Pine Hill Lagoon (334) 963-4351	3/5/2007	20,000 gallons	24 hrs	Hwy 5 South Pine Hill, Alabama	Cub Creek	Infiltration	
	3/6/2007	25,000 gallons	24 hrs	4455 Broad Street	Cub Creek	LS machine and motor failure	
	3/8/2007	4000 gallons	3.5 hours	across from 4455 Broad St	Cub Creek	Lift Station Failure. Plugged lines	Jet truck cleaned lines of sand and sludge. Lift station back in service @ 10:30 a.m. on 3-8-07.
	3/8/2007	15,000 gallons	through 3-9-07	Hwy 5 South @ lagoon	Cub Creek	Infiltration. Overflow at old discharge pipe this would not be raw sewage	Engineers notified to look at I&I problem - Solutions rehab manholes - talked with ADEM on permit changes.
	4/27/2007	5,000 gals	15 hours	4934 County Road 18	Cub Creek	Grease build up in manhole blocked main line pipe	Called Roto Rooter for jet truck cleaned line. Sewage now flowing