



department of the City of Talladega.

C. The Water and Sewer Board operates an integrated water supply system. Several ground sources (wells) and one surface source furnish drinking water for the subscribers of the Board. At issue in this matter was the operation of one of the wells, the Grant Street Well.

D. Reportedly, between 1995 and 2003 the Grant Street Well operated off and on. The Alabama Department of Environmental Management ("ADEM") reportedly performed annual sampling.

E. In May 2003, the Board performed a routine sampling of the Grant Street Well and discovered that the level of tetrachloroethylene ("PCE") exceeded the Maximum Contaminant Level ("MCL") or "the maximum possible level of a contaminant in drinking water, which is delivered to any user of a public water system," as defined in ADEM Admin. Code R 335-7-2-.01(aa). See generally, ADEM Admin Code R 335-7-2-.04 (regulates MCLs for PCE).

F. The exceedance of the MCL constituted a violation of the Board's Water Supply Permit No. 98-505.<sup>1</sup>

G. On June 11, 2003, ADEM ordered the Board to close the Grant Street Well.

H. In July 2003, reportedly a private class action lawsuit was filed against ADEM, the City of Talladega, and the Water Board.

I. Respondent has represented that the Centers of Disease Control and the Alabama Department of Health performed an analysis of the water in the Grant Street Well.

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<sup>1</sup>The permit in effect at the time of the alleged misconduct was effective December 1, 1997 and expired November 30, 2003. A new permit, Permit No. 2004-625 was issued on November 4, 2003, effective December 1, 2003. The permit authorizes the operation of a public water system. The public water system is also a "community water system" as defined by Code of Alabama § 22-23-31, as amended.

J. In September 2003, EPA began investigating allegations of falsification of daily operating reports regarding use of the alleged contaminated well and turbidity test reports for the water system. Several employees, managers, and supervisors were interviewed.

K. On or about May 14, 2004, ADEM issued an Administrative Order to the Talladega Water and Sewer Board assessing a civil penalty of \$22,700.

L. The Talladega Water and Sewer Board also oversees the operation of three wastewater treatment plants. By letter dated June 7, 2007, ADEM issued an administrative Consent Order to the Talladega Water and Sewer Board for violations of the National Pollutant Discharge Elimination System (NPDES) permit for the Talladega Main Wastewater Treatment Plant for discharged pollutants from a point source into Talladega Creek on various dates from August 2005 to September 2006. A civil penalty is assessed in the Order.<sup>2</sup>

## II. RECITALS

M. For the purposes of federal procurement and non-procurement activities, the alleged conduct as set forth in paragraphs E through K, constitutes basis under 2 C.F.R. Part 180 as implemented by 2 C.F.R. Part 1532 for the suspension and debarment of Respondent.

N. The Respondent, through its counsel and representatives, met with SDD in Talladega, Alabama on March 27, 2007, and has advised EPA that the Respondent desires to resolve the potential suspension and debarment of the Respondent arising out of the above-mentioned conduct.

O. The Respondent wishes to affirmatively demonstrate its present responsibility,

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<sup>2</sup> Approval of the Consent Order has been given by the City of Talladega and thereafter will be subject to a 30-day public notice and comment period and may be the subject of a public hearing if significant comments are received.

business integrity, and good faith, and has begun to take certain steps, and has agreed to take additional steps, to assure EPA of its present responsibility to do business with the federal government. In particular, the Respondent has done or agrees to do the following:

- (1) Replaced the turbidity monitor in 2003;
- (2) Installed an aeration system at the Grant Street Well in September 2006;
- (3) A CT enhancement project was performed ;
- (4) Lead paint was removed from water storage tanks;
- (5) Over \$2 million was spent on improvements to the water system;
- (6) Provide enhanced training as provided in Paragraph 12;
- (7) Develop an ethics and code of conduct policy and distribute to Water and Sewer Department employees;
- (8) Made certain attempts to resolve wastewater treatment plant and collection system concerns by installing microscreens in 2003 to provide improved treatment, to obtain additional funding for improvements through passage of a sewer use rate increase in January 2006; and initiated a wastewater treatment plant rehabilitation project in 2005 which included rebuilding of nitrification tower pumps and digester mixing pump; and
- (9) Initiate development and implementation of a Fats, Oils, and Grease ("FOG") Program and FOG ordinance and seek increased funding for additional work.

P. The Respondent has agreed to all the terms and conditions of this Compliance Agreement, as a specific precaution against future violation of the federal, state, and local government laws.

Q. EPA has determined that the terms and conditions of this Agreement provide adequate assurance that the interests of the Government will be sufficiently protected to preclude the necessity of suspension and debarment of the Respondent. EPA agrees not to debar the Respondent for the misconduct that gave rise to this Agreement and as set forth in paragraphs E to H of this Agreement, so long as the Respondent remains in full compliance with the terms and conditions of this Agreement.

R. This Agreement in no way restricts the legal authority and duty of EPA to institute suspension and/or debarment proceedings against the Respondent if EPA receives information that provides independent cause(s) for additional administrative actions.

S. WHEREFORE, the parties agree to the above express language and terms and all of the following terms, conditions, and provisions set forth below.

**TERMS AND CONDITIONS**

**III. DEFINITIONS**

1. Definitions and terms for this Agreement are as follows:
  - a. The "effective date" of this Agreement shall be the date the EPA Suspending and Debaring Official signs the Agreement on behalf of EPA.
  - b. "Government" and "federal government" will include any department, agency, division, agent or independent establishment of the federal government of the United States of America.
  - c. "City of Talladega, Alabama" or "Talladega" means the Water and Sewer Department and all of its high level executives, managers, supervisors and employees.

- d. The period of this Agreement shall be for three (3) years from its effective date.
- e. All conditions and required documents under this Agreement to be met on specific dates will be from the effective date of the Agreement, unless otherwise specified.
- f. Time requirements set forth in this Agreement and expressed as days are understood to mean "calendar days".

#### **IV. PARTIES BOUND AND NOTICE OF TRANSFER**

2. This Agreement shall apply to and be binding upon the Respondent, its officers, members, agents, successors, transferees, assigns and all persons acting on its behalf. The Respondent certifies that the undersigned representatives are fully authorized by the Respondent to enter into the terms and conditions of this Agreement, to execute it on behalf of the Respondent, and to legally bind the Respondent on whose behalf he or she executes this Agreement.

3. No change in the executive structure or management of the City of Talladega, Alabama or its Water and Sewer Department will in any way alter the status of the Respondent, or in any way alter the responsibilities of the Respondent under this Agreement.

#### **V. COMPLIANCE RESPONSIBILITY**

4. The Respondent shall comply with all applicable federal, state, and local environmental laws. Respondent will also fully comply with all of its other applicable Settlement Agreements, Consent Judgments, Consent Decrees, Plea Agreement, and Administrative Orders. This Agreement does not authorize Respondent to violate any federal or state statute or regulation. Furthermore, Respondent agrees in complying with the terms of this

Agreement and in the performance of its federal grants held or obtained by it and its successors, that it will not contract or subcontract with any person or entity currently on the List of Parties Excluded from Federal Procurement or Non-procurement Programs maintained by the General Services Administration in connection with a federal grant or contract.

## VI. CITY PRACTICES AND ETHICS POLICY

5. The City of Talladega, Alabama Water and Sewer Department shall develop and maintain an Ethics and Code of Conduct Policy. The Ethics and Code of Conduct Policy will be copied and disseminated to all of the executives, managers, supervisors, employees, and contractors of its Water and Sewer Department within 90 days of the effective date of this Agreement. This Ethics Code or Policy will include, at a minimum: (a) a statement of Talladega's commitment to comply with all federal environmental laws and regulations; (b) ethical guidelines for Water and Sewer Department employees to follow in their internal business practices as well as with external customers such as federal, state, local, and private entities as applicable; (c) a description of the federal telephone Fraud, Waste, and Abuse hotline where employees may report violations of the law and this Agreement to the federal government; and (d) a notice from the City of Talladega that appropriate disciplinary action, including dismissal, will be taken or solicited against any manager, officer, employee or other person working in positions on behalf of Talladega, whose conduct violates acceptable ethical conduct and applicable federal environmental laws and regulations. Each manager, supervisor, employee, and contractor of its Water and Sewer Department is required to sign a statement providing that he or she has been provided with Respondent's ethics and code of conduct policy and that he or she fully understands its contents. Each new manager, supervisor, employee, or contractor will be


provided with a copy of the policy and required to sign a certification. Certifications will be retained for audit review by SDD for the term of the Compliance Agreement.

## VII. ETHICS COMPLIANCE OFFICER

6. Appointment. Within 60 days of the effective date of this Agreement, Respondent shall appoint an Ethics Compliance Officer. The Ethics Compliance Officer shall receive and investigate all allegations of noncompliance with this Agreement, serve as the first point of contact for all questions regarding the terms and conditions of the Agreement and for ensuring implementation of this Agreement. The appointment of the Ethics Compliance Officer, must be with the consultation of EPA, SDD.

7. Notification. Respondent will notify all City of Talladega Water and Sewer Department managers, supervisors, and employees of the name, address and telephone number of the Ethics Compliance Officer by letter and by prominent display of posters with this information in all work areas. The letter and posters will inform managers, supervisors, and employees and persons working on behalf of Respondent that the Ethics Compliance Officer is available for consultation on any questions that they may have regarding their responsibilities in their positions, that they are to report an alleged violation of law, regulation, or code of conduct by employees, and that their identity may remain confidential, if requested.

8. Authority. The Ethics Compliance Officer shall have complete authority to investigate any allegations of suspected violations or other matters which come to the attention of the Ethics Compliance Officer which raise questions as to Respondent's business integrity or present responsibility. At the conclusion of such investigations, a written report shall be prepared detailing the substance of the allegations, evidence revealed by the investigation, and

 the findings and recommendations and any corrective action(s) taken. Incident report logs or other written documentation and written investigation reports shall be retained for review by SDD for the term of the Compliance Agreement.

10. Reporting. The Ethics Compliance Officer shall report annually to EPA, or more frequently as necessary and appropriate of the status and compliance of Respondent with this Agreement.

11. If EPA SDD determines that the Ethics Compliance Officer is not performing in accordance with the terms of this Agreement, EPA may require Respondent to propose a new Ethics Compliance Officer, subject to consultation with EPA SDD.

#### **VIII. OTHER REQUIREMENTS**

##### **12. Training**

(a) Ethics Training. Respondent will ensure that each of its Water and Sewer Department managers, supervisors, and employees and any contractor personnel working in positions on behalf of Respondent receive at least one hour of annual training on ethics and its code of conduct policy. This training will be reviewed annually and updated as necessary to include current government compliance and ethical standards. Within 90 days of the effective date of this Compliance Agreement, Respondent will submit to EPA documentation certifying the completion of this training. Respondent will annually provide EPA's Suspension and Debarment Division ("SDD") a copy of its updated training logs, certificates and agendas.

(b) Environmental Compliance Training. Respondent will ensure that each of its Water and Sewer Department managers, supervisors, and employees receive at least a minimum two hour annual training on compliance with applicable environmental laws and regulations.

Specifically, for Water and Sewer Department managers, supervisors, and employees at the wastewater treatment facilities, the environmental training shall include training on the management of sanitary sewer overflows (SSOs) and management of a wastewater collection system. This training will be updated as necessary to include current environmental law requirements. Within 60 days of the effective date of this Compliance Agreement, Respondent will submit to EPA documentation certifying the completion of this training. Respondent will annually provide EPA's Suspension and Debarment Division ("SDD") a copy of its updated training logs, certificates and agendas.

13. Certifications. Respondent shall establish a procedure by which all certifications regarding entries in the Respondent's applicable operation and maintenance log books are updated and re-signed by each employee at least annually. Respondent shall certify to EPA SDD that such procedure has been established within 60 days of the effective date of the Agreement. The certifications regarding the Monthly Operating Report, well source data input, sampling reports, turbidity reports; Discharge Monitoring Reports, documentation of the operation and maintenance of the wastewater collection system, and any other reports required to be submitted to the appropriate state or federal regulatory agency shall be made in accordance to the frequency of when such reports are due by regulation and shall comply with the appropriate regulatory standards and shall be properly reviewed and approved by the Director of Operations for the Water and Sewer Department. On the annual anniversary date of this Agreement, the Talladega City Manager shall provide to SDD an annual report certifying compliance with the terms of this Agreement and certifying compliance with all terms of the ADEM Consent Order referenced in Paragraph L, and a summary of all environmental compliance actions implemented by Talladega,

City Manager's report

including implementation status or completion of all actions outlined in Paragraph O of this Agreement.

**IX. COMPLIANCE AGREEMENT GENERAL PROVISIONS**

**14. FINALITY OF AGREEMENT**

The Respondent hereby waives all further notices of opportunity for a hearing to which it may otherwise be entitled and consents to proceeding according to the terms of this Agreement.

**15. DEBARMENT RESOLUTION**

In consideration of the Respondent's compliance with all of the terms of this Agreement, EPA agrees not to suspend or debar Respondent based on the facts recited herein.

**16. BREACH OF AGREEMENT/SURVIVAL OF CAUSE FOR DEBARMENT**

The Parties agree that these causes for debarment survive the execution of this Agreement and EPA may initiate suspension and/or debarment proceedings against the Respondent on these grounds if there is a material breach of this Agreement. Any material breach of this Agreement may also be regarded as an independent cause for suspension or debarment; the Parties agree that chronic violations of non-material provisions of this Agreement may cumulatively become a material breach of this Agreement. EPA may, upon evidence that the Respondent has committed a material breach of the Agreement, suspend or propose the Respondent for debarment. EPA will promptly notify the Respondents in writing of the suspension or proposed debarment. The Respondent will have the right to contest the suspension or proposed debarment according to the procedures set forth in 2 C.F.R. Part 180 as implemented by 2 C.F.R. Part 1532.

**17. LIMITATION ON SETTLEMENT**

This Agreement relates solely to suspension and/or debarment issues in conjunction with the circumstances recited in paragraphs E to K and in no way waives any criminal, civil, contractual, or administrative remedy or right which the government may have for the circumstances so described nor does this Agreement restrict the authority, responsibility, or legal duty of EPA to consider and institute suspension and/or debarment proceedings against the respondent if information is received which provides a cause for suspension and/or debarment independent of the circumstances recited/referenced herein.

**18. RELEASE OF LIABILITY**

By execution of this Agreement, the Respondent releases and shall hold harmless the United States, its instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims arising out of and the negotiations leading to this Agreement and all matters contained herein.

**19. FREEDOM OF INFORMATION**

The Respondent acknowledges that this Agreement is subject to release by EPA in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552 et seq.

**20. OBEY ALL LAWS**

The Respondent will obey all laws and regulations<sup>66</sup> of the United States, the relevant state and the local jurisdiction. Nothing in this Agreement shall be deemed to limit the Respondent's obligations under any federal law or regulation nor does this Agreement limit in any manner the right of the EPA to apply to Respondent any provision of any regulation lawfully promulgated by EPA or the right of EPA to modify or amend or add to such regulations from time to time.

21. **REPORTING REQUIREMENT** (Modified)

In the event that the Respondent is ever indicted, convicted, or otherwise formally charged with fraudulent activity or any environmental violation, either criminally or civilly, including any notices of violation received, the Respondent agrees to notify EPA at the address specified herein within ten (10) calendar days of the event; Respondent will likewise notify EPA upon the indictment of, or the entering of a guilty plea or plea of nolo contendere by any director, officer, or employee, or contractor of Respondent for violation of any criminal statute where the violation occurred in connection with the individual's performance of duties for, or on behalf of, Respondent within ten (10) calendar days of the entry of the event.

22. **SUCCESSORS**

The terms, conditions and obligations of this Agreement shall survive reorganization of Talladega's current structure and shall be fully binding upon any organization which is a successor organization or which is associated or affiliated with Talladega.

23. **ON-SITE COMPLIANCE REVIEW**

During the period of this Agreement, the EPA may audit Respondent's compliance with the terms of this Agreement. Such audit may include the examination of relevant business records and reports, including, but not limited to, examination of all financial records supporting grant expenditures, financial status reports, budget documents, and other documents. Such audit may also include visits by a member or members of EPA, SDD or its designee to Respondent's offices and interviews with managers, supervisors, employees, and contractors. Respondent agrees to reimburse the U.S. Treasury for the reasonable costs actually incurred of conducting such audits during the term of this Agreement. The Parties agree that "cost" shall include

reasonable expense for travel, transportation, lodging and meals, to the extent normally authorized under Federal rules governing government travel, as such expenses are actually incurred by EPA personnel or its authorized agents in conducting site visits for the purpose of verifying compliance with this Agreement.

**24. AUDITS NOT CONDUCTED ON-SITE**

As an alternative to an on-site audit of Respondent's compliance with the terms of this Agreement, EPA may, at its sole election, conduct an audit by mail in which instance Respondent shall provide documentation of its compliance with this Agreement including but not limited to copies of documentation maintained as required in this Agreement and such additional documentation and/or certifications as may be requested by EPA.

**25. DOCUMENTATION**

Respondent shall maintain documentation sufficient to demonstrate its compliance with the requirements of this Agreement.

**26. NOTIFICATION ADDRESSES**

All notifications or submissions from the Respondent required by this Agreement will be delivered to the following addresses:

Angelia Souder Blackwell  
District Counsel  
Southeastern District  
Suspension and Debarment  
U.S. Environmental Protection Agency  
61 Forsyth Street  
Atlanta, Georgia 30303

and copy to:

Via regular U.S. mail:

Via express mail, hand delivery:

Frank Dawkins  
Investigation and Oversight (3902R)  
Suspension and Debarment Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20246

or

Frank Dawkins (Rm 512104)  
Investigations and Oversight  
Suspension and Debarment Division  
U.S. Environmental Protection Agency  
1300 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Name, Address and Title of corporate official responsible for ensuring the timely submissions to EPA and for receiving EPA communications made under this Agreement, is:

Sue A. Horn  
City Manager  
City of Talladega, Alabama  
P.O. Box 498  
Talladega, AL 35161

**27. ENDORSEMENT BY THE DEBARRING OFFICIAL**

This Agreement shall become effective only upon its acceptance by the Debarring Official, pursuant to 2 C.F.R. Part 180 as implemented by 2 C.F.R. Part 1532, as evidenced by his dated endorsement affixed hereto.

**28. TERM OF THE AGREEMENT**

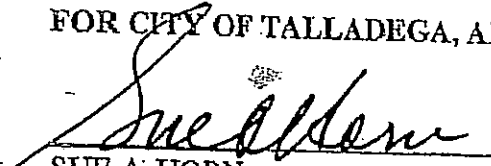
This Agreement shall remain in force for three (3) years from the date of the Debarring Official's enforcement.

**29. CERTIFICATION AS TO RECITED FACTS**

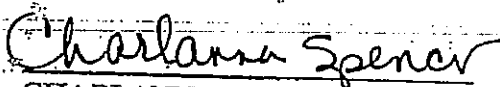
By signature hereto, the individuals executing this Agreement on behalf of the Respondent certifies, personally and on behalf of the Respondent, subject to the criminal penalties of 18 U.S.C. § 1001, that the facts recited herein are accurate.

In the Matter of  
City of Talladega, Alabama  
Water and Sewer Department  
EPA Case No. 06-0350-00  
Compliance Agreement

FOR CITY OF TALLADEGA, ALABAMA

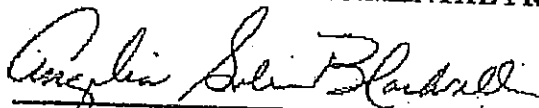
  
SUE A. HORN  
City Manager

Date: 9-6-07

  
CHARLANNA W. SPENCER  
Sasser, Bolton, Stidham & Sefton  
Counsel for Respondent

Date: 9-13-07


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

  
ANGELIA SOUDER BLACKWELL  
District Counsel, Southeastern District  
Suspension and Debarment Division

Date: August 30, 2007

**DEBARRING OFFICIAL'S ENDORSEMENT**

Having reviewed the terms and conditions of this Compliance Agreement, I hereby approve these terms as an appropriate disposition of this matter of City of Talladega Water and Sewer Board EPA Case No. 06-0350-00. This certification is conditioned upon full compliance with the material terms of this Agreement. Failure to comply with these terms may result in immediate imposition of suspension and/or debarment proceedings. In addition, a material violation of this Agreement may result in a discretionary suspension and/or debarment of the City of Talladega Water and Sewer Board as appropriate.

  
(for Robert Meunier)  
ROBERT F. MEUNIER  
Debarring Official  
Office of Grants and Debarment

Date: September 25, 2007