

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

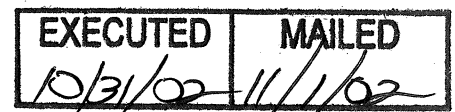
IN THE MATTER OF)
JEFF MASTERSON)
POULTRY BOILER OPERATION)
ALA000345)
RUSSELLVILLE)
FRANKLIN COUNTY, ALABAMA)

ADEM CONSENT ORDER
NO. 03-021-CMNPS

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, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") 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, 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 makes the following FINDINGS:

1. Jeff Masterson is the owner/operator of a poultry broiler facility located in Franklin County, Alabama.



2. The Department 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.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, 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 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. ADEM Administrative Code Chapter 335-6-7 requires that an Animal Feeding Operation (AFO) containing 1,000 animal units (125,000 laying hens, broilers or other poultry) or more, must register with the Department as a Concentrated Animal Feeding Operation (CAFO).

5. On January 15, 2002, an inspection was conducted at Jeff Masterson Farm in Franklin County. During the inspection it was noted that the farm included six production buildings. During a follow-up telephone call, Jeff Masterson stated that his operation contained 139,800 broilers. The purpose of this call was to determine how many birds were present on the farm and to verify the registration status of Jeff Masterson Farm. During the conversation, Jeff Masterson stated that he had not registered or begun the process of registering as a CAFO.

6. On March 5, 2002, Jeff Masterson's registration request was approved by the Department.

7. Jeff Masterson neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AWPCA, Jeff Masterson has consented to the terms of this Consent Order.

8. 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 Jeff Masterson, it is hereby ORDERED:

A. That, not later than thirty (30) days following the date of execution of this Consent Order, Jeff Masterson shall pay to the Department a civil penalty in the amount of Five-Hundred Dollars (\$500) for the violations cited herein. That, immediately upon the date of execution of this Consent Order, and continuing each and every day thereafter, Jeff Masterson shall comply with the requirements of the AWPCA, ADEM Admin. Code Chapter 335-6-7 and CAFO Registration ALA000345, except as provided by any compliance schedule contained in this Consent Order.

B. 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

C. That, following the date of execution of this Consent Order, Jeff Masterson shall fully implement and regularly maintain the ADEM accepted WMSP to ensure continuing compliance with the AWPCA, ADEM Admin. Code Chapter 335-6-7 and CAFO Registration ALA000345.

D. That, in addition to the requirements of Paragraphs A and C, within thirty (30) days following the date of execution of this Consent Order, Jeff Masterson shall submit to the Department, certification signed by both the Operator and the QCP that prepared the WMSP, that the WMSP has been implemented in a manner that meets or exceeds NRCS technical standards and guidelines and that the facility is being operated in a manner to ensure the protection of groundwater and surface water quality.

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. Jeff Masterson 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, Jeff Masterson agrees that the Department may properly bring an action to compel compliance with the terms and

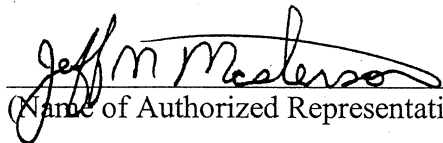
conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Jeff Masterson also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Jeff Masterson shall be limited to the defenses 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 Jeff Masterson, 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 Jeff Masterson) 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 seven (7) 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 Jeff Masterson, 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.

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 Jeff Masterson 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 Jeff Masterson does hereby waive any hearing on the terms and conditions of same.

JEFF MASTERSON


(Name of Authorized Representative)

Date Signed: 10-24-02

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


James W. Warr
Director

Date Signed: 31 Oct 2002