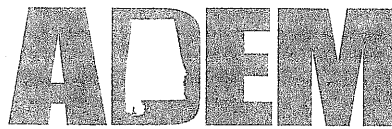


ONIS "TREY" GLENN, III
DIRECTOR



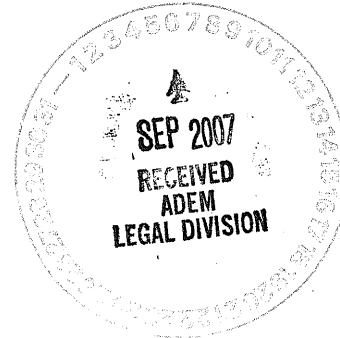
Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

BOB RILEY
GOVERNOR

September 6, 2007

CERTIFIED MAIL #7005 1820 0003 1875 6634
RETURN RECEIPT REQUESTED



Mr. Ray Madden, Superintendent of Utilities
City of Brewton
Post Office Box 368
Brewton, AL 36427

Re: Brewton Lagoon
NPDES Permit No. AL0023825
Escambia County
Consent Order No. 07-164-CWP

Dear Mr. Madden:

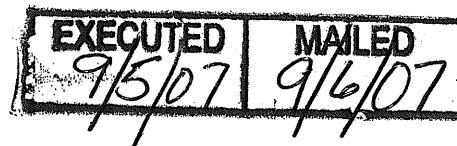
Please find enclosed ADEM Consent Order No. 07-164-CWP which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of both the City of Brewton and the Department. Please note that the assessed 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,

Glenna L. Dean /for

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:)

City of Brewton)

Brewton Lagoon)

Brewton, (Escambia County), AL)

NPDES Permit No. AL0023825)

Consent Order No. 07-164-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the City of Brewton (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 Brewton Lagoon located in Brewton, Escambia County, Alabama. The wastewater treatment facility discharges pollutants from a point source into Murder Creek, a water of the state.

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

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

4. On November 1, 2005, the Department issued the Permittee's National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0023825 (hereinafter "the Permit") to the Permittee, establishing limitations on the discharge of pollutants from a point source, designated therein as outfall number 001-1, into Murder Creek. 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.

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

6. On March 15, 2007, the Department completed an NPDES Compliance Evaluation Inspections (CEI). At the time of the inspection, the Department noted the

effluent being discharged to Murder Creek was bright green indicating the presence of algae. In addition, the Permittee's pH and dissolved oxygen meters were found to be inoperable at the time of the Department's inspection.

7. The Permittee violated Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.), by discharging wastewater without a permit. For the months of July 2005 through March 2007, the Permittee has reported ten unpermitted discharges classified as Sanitary Sewer Overflows (hereinafter "SSOs"). Of the ten reported SSOs, eight were related to hurricane events. The two SSOs that were not hurricane-related led to a discharge that was reported to have reached a water of the state. The complete list of reported SSOs is provided in Attachment 2.

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

9. 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

10. 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 two unpermitted discharges (i.e., SSOs) not related to hurricane events. The violations also included discharging wastewater with pollutant levels that exceeded the limits established in the Permit. The effluent violations consisted of exceeding the monthly average permit limitations for Total Suspended Solids (hereinafter "TSS"), percent removal of TSS, Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD") percent removal, and Fecal Coliform (hereinafter "FC"). Also, the violations consisted of exceeding the weekly average limit for TSS. The effluent violations also included exceeding the daily minimum discharge limits for Dissolved Oxygen and pH. The effluent violations also included exceeding the daily maximum limits for FC and pH. The Department has no evidence of irreparable harm to the environment or any threat to the health and safety of the public resulting from these violations.

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.

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.

E. HISTORY OF PREVIOUS VIOLATIONS: Violations of a similar nature and degree have been reported in the time prior to the two year period addressed by this Consent Order. On January 12, 2007, the Department issued a Notice of Violation for the permit violations referenced in this Consent Order. In addition, the Department issued a Warning Letter to the Permittee highlighting the deficiencies noted during the March 15, 2007 CEI. These prior enforcement actions have been unsuccessful at resolving permit violations.

F. THE ABILITY TO PAY: Based upon information available to the Department, the Department believes that 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 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 \$10,800.00 in settlement of the violations alleged herein within forty-five (45) 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 180 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 also include the following: 1) an identification of the potential causes of

noncompliance; 2) an evaluation of the performance of the water hyacinths and bio-puff application currently underway; and 3) a summary of the results of the Permittee's investigation into the changes that should be made by the Permittee to achieve compliance with NPDES Permit Number AL0023825. At a minimum, the Permittee shall 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 for infiltration and inflow concerns, the need for modification of existing treatment 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 must 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 in accordance with the approved schedule.

D. The Permittee agrees to prepare and submit Quarterly Status 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 nine months after the effective date of this Consent Order and shall continue to be submitted every three months thereafter that the Permittee's performance obligations under this Consent Order remain incomplete. In addition, not later than fourteen days following

each applicable due date contained in this Consent Order, the Permittee shall submit a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. No later than the date established by Paragraph C of this Consent Order, the Permittee agrees to comply with the limits established by the Permit for Total Suspended Solids Percent Removal, Carbonaceous Biochemical Oxygen Demand Percent Removal, Dissolved Oxygen, Fecal Coliform, pH, and Total Suspended Solids. Within this same time frame the Permittee also agrees to eliminate unpermitted discharges resulting from SSOs to the waters of the State. 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.

F. The Permittee agrees that, after the effective date of this Consent Order, for every violation of the Permit effluent limitations for TSS, TSS Percent Removal, CBOD Percent Removal, FC, Dissolved Oxygen and pH, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0023825, the Permittee shall pay to the Department the sum of \$200.00 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$300.00 for each and every monthly average violation.

G. 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, and D

contained herein. The stipulated civil penalties for failure to meet each milestone outlined herein or for failure to meet any milestone date presented in the approved Compliance Plan or any other 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 and E the Department reserves the right to file a new action against the Permittee.

H. The parties agree that the cumulative stipulated penalties described in paragraphs F and G above shall under no circumstances exceed \$24,000.00. Once stipulated penalties of \$24,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the schedule established by Paragraph C above, 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 in any other court of competent jurisdiction to enforce compliance of this Consent Order.

I. 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.

J. 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.

K. 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.

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

M. 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, that 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.

N. 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 that 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 actions address new matters not raised in this Consent Order.

O. 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.

P. 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.

Q. 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.

R. 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.

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

T. 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.

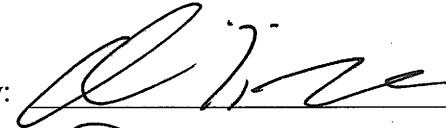
CITY OF BREWTON

By: 

Its: Utilities Superintendent

Date: 07/24/07

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 

Its: Director

Date: 9/5/07

Attachment 1

AL0023825 BREWTON LAGOON

DMR Value Limit Units Averaging Time

Outfall ID: 0011

August, 2005

	<u>SOLIDS SUSP PERCENT</u>		Units	Averaging Time
1	0	65	Percent	Monthly Average

	<u>TSS</u>		Units	Averaging Time
2	103.5	90	mg/l	Monthly Average
3	1560.41	1125	lbs/day	Monthly Average
4	1878.45	1688	lbs/day	Weekly Average

October, 2005

	<u>CBOD 5 Day Percent Removal</u>		Units	Averaging Time
5	75	85	Percent	Monthly Average

	<u>SOLIDS SUSP PERCENT</u>		Units	Averaging Time
6	63	65	Percent	Monthly Average

November, 2005

	<u>TSS</u>		Units	Averaging Time
7	96.95	90	mg/l	Monthly Average

December, 2005

	<u>CBOD 5 Day Percent Removal</u>		Units	Averaging Time
8	59	85	Percent	Monthly Average

January, 2006

	<u>CBOD 5 Day Percent Removal</u>		Units	Averaging Time
9	81	85	Percent	Monthly Average

March, 2006

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
10	3.7	6	mg/l	Daily Minimum

April, 2006

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
11	5.58	6	mg/l	Daily Minimum

	<u>FECAL COLIFORM WINTER</u>		Units	Averaging Time
12	6536	1000	#/100 ml	Monthly Geo Mean
13	13000	2000	#/100 ml	Daily Maximum

May, 2006

	<u>PH</u>		Units	Averaging Time
14	9.3	9	SU	Daily Maximum

	<u>TSS</u>		Units	Averaging Time
15	113.15	90	mg/l	Monthly Average
16	145	135	mg/l	Weekly Average

June, 2006

	<u>CBOD 5 Day Percent Removal</u>		Units	Averaging Time
17	83	85	Percent	Monthly Average

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
18	2.7	6	mg/l	Daily Minimum

	<u>TSS</u>		Units	Averaging Time
19	125.7	90	mg/l	Monthly Average
20	155	135	mg/l	Weekly Average

Page 1 of 1

July, 2006

	<u>TSS</u>		Units	Averaging Time
21	97	90	mg/l	Monthly Average

			Units	Averaging Time
22	1253.08	1125	lbs/day	Monthly Average

August, 2006

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
23	0	6	mg/l	Daily Minimum

	<u>PH</u>		Units	Averaging Time
24	0	6	SU	Daily Minimum

September, 2006

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
25	0	6	mg/l	Daily Minimum

	<u>FECAL COLIFORM SUMMER</u>		Units	Averaging Time
26	590.5	200	#/100 ml	Monthly Geo Mean

	<u>PH</u>		Units	Averaging Time
27	0	6	SU	Daily Minimum

	<u>TSS</u>		Units	Averaging Time
28	124	90	mg/l	Monthly Average

			Units	Averaging Time
29	158	135	mg/l	Weekly Average

			Units	Averaging Time
30	1800.56	1125	lbs/day	Monthly Average

			Units	Averaging Time
31	2202.52	1688	lbs/day	Weekly Average

October, 2006

	<u>DISSOLVED OXYGEN</u>		Units	Averaging Time
32	0	6	mg/l	Daily Minimum

	<u>FECAL COLIFORM WINTER</u>		Units	Averaging Time
33	3136.5	1000	#/100 ml	Monthly Geo Mean

			Units	Averaging Time
34	5000	2000	#/100 ml	Daily Maximum

February, 2007

	<u>CBOD 5 Day Percent Removal</u>		Units	Averaging Time
35	76	85	Percent	Monthly Average

SSO Reports

Reports Between 05/01/2005 and 03/31/2007

County Name *Escambia*
Facility BREWTON LAGOON

Permit Number: AL0023825 FacilityType: Major ADEM Area: Cattett

Caller Phone #	Caller Report Date and Time	Oral Report Date and Time	Overflow Date and Time	Written Report Date	Volume SSO	Length of SSO	Location	Destination n SSO	Cause	Corrective Actions Taken	Others Notified
	7/10/2005				100,000 gal	48 hr	Lift station	Murder creek	power failure to hurricane dennis	restore power as quickly as possible	
	7/10/2005				50,000 gal	36	king Lift station	Murder creek	power failure to hurricane dennis	restore power as quickly as possible	
	7/10/2005				50,000 gal	30 hr	east Lift station	Murder creek	power failure to hurricane dennis	restore power as quickly as possible	
	7/10/2005				110,000 gal	50 hr	bryant circle Lift station	Murder creek	power failure to hurricane dennis	restore power as quickly as possible	
	7/10/2005				30,000 gal	48 hr	Lift station	Murder creek	power failure to hurricane dennis	restore power as quickly as possible	
	7/11/2005			7/14/2005	50,000 gal	60 hr	M. L. King lift station	murder creek	power failure due to hurricane dennis	restore power as quickly as possible	
	7/11/2005			7/14/2005	50,000 gal	30 hr	east underwood station	burnt corn creek	power failure due to hurricane dennis	restore power as quickly as possible	
	7/11/2005			7/14/2005	30,000 gal	48 hr	robinson station	murder creek	power failure due to hurricane dennis	restore power as quickly as possible	
	3/29/2006			4/5/2006	40,000 gallons	4 to 5 days	Belleville Ave. Behind YMCA	Burnt Corn Creek	Grease Clogged main line.	Cleaned the manhole and cleared eight (8) inch sewer line. Checking to determine where the grease is coming from.	

Ray Madden 5/12/2006 5,000 gallons 3 hours Highway 29 & Highway 31 Burnt Corn Creek Eight-inch sewer main was clogged with roots and grease. We unstopped the line with the sewer jet truck and are keeping a close eye on the situation until we can get the sewer video truck; repair and check line out.