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State files lawsuit against UBT for pollution permit violations

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The Utilities Board of Tuskegee has been dodging bullet after bullet with its South Wastewater Treatment Plant in Tuskegee. Now, the State of Alabama is stepping in, ready to hand down what could either become a shield or a kill shot.

Alabama authorized Attorney General Troy King to bring a civil action lawsuit against UBT for violations of the Alabama Water Pollution Control Act. The case was filed in the Macon County Circuit Court on Dec. 22, 2010.

In the suit, the state's complaint alleges that UBT violated permits issued by the Alabama Department of Environmental Management (ADEM) by discharging more than the maximum amount of pollutants it was allowed into Macon County's Calebee Creek. It authorizes King to recover civil penalties at a maximum amount of \$25,000 for each violation and order UBT to take action to prevent future violations.

Though it may not seem that way, it could be good news for the board.

UBT has publicly acknowledged its South Plant can't meet the standards set by the Water Pollution Control Act, which are defined by the Environmental Protection Agency. General Manager Mark Ennis said last month – as he has several times in the past – that the plant's shortcomings are a result of the EPA's limits, which get more stringent every five-year permit cycle.

The solution, one presented and accepted by ADEM, was to reroute flow from the South Plant to UBT's North Wastewater Treatment Plant at a cost of more than \$13 million. The only other option to operate within the limits is for the board to buy hundreds of acres to distribute pollutants over land instead of in the water.

UBT, though financially stable and meeting its bond covenants year after year, doesn't have that cash. Ennis said it's been hoping to acquire state revolving funds for the project to no avail. And because ADEM knows it, the board isn't overly concerned with the suit.

“By us dealing with the state and not the other group, we're protected,” UBT attorney Milton Davis said. “I think we can come forward with a solution that will solve the problem and not do something that will be adverse to the integrity of the Utilities Board.”

The “other group” Davis speaks of is the Conservation Alabama Foundation, which sent a letter to UBT

in October 2010 announcing its intent to file its own lawsuit if UBT had not taken action within 60 days to correct its problems at the plant.

Adam Snyder, Executive Director of Conservation Alabama, said the organization's intent with the letter is more to encourage ADEM to enforce the regulations set by the EPA.

"What we've been looking at for Tuskegee and dozens and dozens of others is really an egregious failure to meet permit regulations and ADEM taking little or no action," he said. "We want to highlight the fact that ADEM's enforcement is lax and it's affecting public health."

Conservation Alabama's attorney, David Ludder of Tallahassee, Fla., has sent 15 letters of intent to sue to Alabama utilities providers over water pollution violations in the past two years. In Tuskegee's case, Ludder's letter shows the board has committed 4,759 permit violations dating back to 1997.

If the Attorney General elects to collect the maximum penalty on each violation in accordance with the state's suit, using Ludder's figures the total would come to \$118,795,000. The state did not assess a definitive number of violations in its complaint.

"I understand about financial problems in rural communities and wish them well in finding funds," Ludder said. "Nevertheless, there has to be some kind of sanction that keeps their feet to the fire."

Attorney Davis said the board is taking proactive steps to correct the problem, including giving reports to the state and actively looking for alternatives in terms of planning. He added that no reports from the state indicate the public has ever been at risk due to pollutant discharges at the South Plant.

When that was offered to Ludder, he responded that the EPA's limits don't just protect people.

"They also protect the environment," he said. "And that's something ADEM has clearly failed to do."