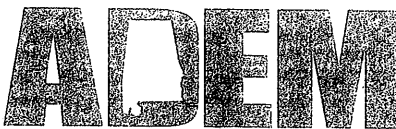


ONIS "TREY" GLENN, III  
DIRECTOR



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

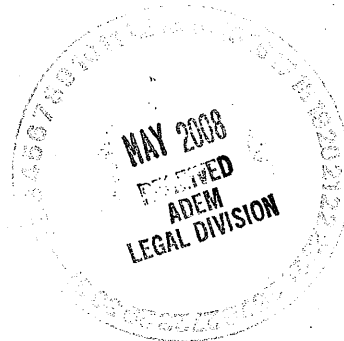
BOB RILEY  
GOVERNOR

May 8, 2008

CERTIFIED MAIL 7007 0710 0001 6204 0885  
RETURN RECEIPT REQUESTED

MR C. ALAN DAVIS  
VICE PRESIDENT - OPERATIONS  
RADICISPANDEX CORPORATION  
1301 INDUSTRIAL PARK DRIVE  
TUSCALOOSA AL 35401

RE: Final Consent Order No. 08-147-CWP  
Radicispandex Corporation  
Permit No. IU 39 63 00486



Dear Mr. Davis:

Please find enclosed Consent Order No. 08-147-CWP which requires Radicispandex Corporation to take certain actions in regard to violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the agreement of Radicispandex Corporation. Please note that the assessed civil penalty is due within 45 days of the date of this letter.

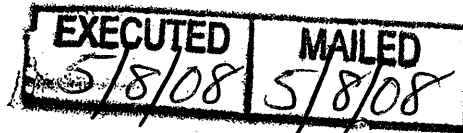
If you have any questions, please contact Wayne Holt at (334) 271-7847.

Sincerely,

James E. McIndoe, Chief  
Water Division

Enclosure

Copy to: Olivia Rowell- Office of General Counsel  
Wayne Holt, ADEM- Water Division (e-mail)  
James Carlson, ADEM-Water Division (e-mail)  
Cesar Zapata, US EPA Region IV  
ADEM-Public Affairs Office (e-mail)  
Emily Anderson, ADEM-Water Division (e-mail)



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:**

**Radicispandex Corporation  
1301 Industrial Park Drive  
Tuscaloosa, Tuscaloosa County, AL**

**SID Permit No. IU 39-63-00486**

**Consent Order No. 08-147-CWP**

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Radicispandex Corporation (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 § 307 of the Federal Water Pollution Control Act, 33 U.S.C. § 1317.

***STIPULATIONS***

1. The Permittee operates a facility engaged in the manufacturing of spandex elastic thread located at 1301 Industrial Park Drive, in the City of Tuscaloosa, Tuscaloosa County, Alabama. The Permittee discharges pollutants into the City of Northport's Wastewater Treatment Plant (hereinafter "WWTP").

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 June 23, 2005, the Department issued to the Permittee State Indirect Discharge (hereinafter "SID") Permit Number IU 39-63-00486 (hereinafter "the Permit") establishing limitations on the discharge of pollutants from such point source, designated therein as outfall number 001SA, into the City of Northport's WWTP. 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 into the aforementioned WWTP in violation of the limitations established in the Permit. The months the violations occurred are as follows:

<b>Month-Year</b>	<b>Type</b>	<b>Parameter</b>	<b>Result Reported (ppd)</b>	<b>Permit Limitation (ppd)</b>
Apr-06	Exceed the Daily Maximum	Cyanide, Available	0.013698	0.0051
Apr-06	Exceed the Monthly Average	Cyanide, Available	0.013698	0.00179
May-06	Exceed the Daily Maximum	Cyanide, Available	0.013446	0.0051
May-06	Exceed the Monthly Average	Cyanide, Available	0.013446	0.00179
Jun-06	Exceed the Monthly Average	Cyanide, Available	0.003174	0.00179
Jul-06	Exceed the Daily Maximum	Cyanide, Available	0.011322	0.0051
Jul-06	Exceed the Monthly Average	Cyanide, Available	0.011322	0.00179
Sep-06	Exceed the Daily Maximum	Cyanide, Available	0.031368	0.0051
Sep-06	Exceed the Monthly Average	Cyanide, Available	0.031368	0.00179
Oct-06	Exceed the Daily Maximum	Cyanide, Available	0.01095	0.0051
Oct-06	Exceed the Monthly Average	Cyanide, Available	0.01095	0.00179
Nov-06	Exceed the Daily Maximum	Cyanide, Available	0.023568	0.0051
Nov-06	Exceed the Monthly Average	Cyanide, Available	0.023568	0.00179
Feb-07	Exceed the Monthly Average	Cyanide, Available	0.003402	0.00179
Apr-07	Exceed the Daily Average	Cyanide, Available	0.02952	0.0051
Apr-07	Exceed the Monthly Average	Cyanide, Available	0.02952	0.00179
May-07	Exceed the Daily Maximum	Cyanide, Available	0.03012	0.0051
May-07	Exceed the Monthly Average	Cyanide, Available	0.03012	0.00179
Sep-07	Exceed the Monthly Average	Cyanide, Available	0.004212	0.00179
Oct-07	Exceed the Daily Maximum	Cyanide, Available	0.0078	0.0051
Oct-07	Exceed the Monthly Average	Cyanide, Available	0.0078	0.00179
Nov-07	Exceed the Daily Maximum	Cyanide, Available	0.0212	0.0051
Nov-07	Exceed the Monthly Average	Cyanide, Available	0.0212	0.00179
Dec-07	Exceed the Daily Maximum	Cyanide, Available	0.1344	0.0051
Dec-07	Exceed the Monthly Average	Cyanide, Available	0.1344	0.00179

6. Between April and May 7, 2007, approximately 20,050 gallons of Dimethylacetamide (hereinafter "DMAC") was discharged to the Northport WWTP. The discharge of DMAC is not authorized by the Permittee's current SID Permit. The discharge was determined to be caused by a faulty readout transmitter.

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

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

### ***CONTENTIONS***

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

A. SERIOUSNESS OF THE VIOLATION: Violations consisted of the following: 1) Failure to maintain compliance with established discharge limitations as required by the Permit; and 2) Unpermitted discharge of pollutants to the Northport WWTP. There is no evidence that these violations posed irreparable harm to the environment or any threat to the health or safety of the public.

B. THE STANDARD OF CARE: The Permittee failed to maintain in good working order all systems used by it to achieve compliance with the terms and conditions of the Permit, and failed to have a system in place to ensure that monitoring and reporting requirements of the Permit were met. The Permittee also failed to maintain in good working order all systems used to prevent unpermitted discharges to the City of Northport's WWTP.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit to the Permittee as a result of these violations.

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: There is no record of historic SID Permit violations related to the Permittee.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the 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 \$23,400.00 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 120 after the effective date of this Consent Order, an Engineering Report prepared by a "professional engineer" as described by ADEM Admin. Code r. 335-6-3-.02(a). The Engineering Report shall identify the potential causes of noncompliance, and it shall investigate the need for changes necessary for the Permittee to achieve compliance with the Permit. At a minimum, the Permittee's Engineering Report shall address the following: the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment works. The Engineering Report shall include a schedule for implementation (i.e. a Compliance Plan). If the Department determines through its review of the submitted Engineering Report that the submitted report is not sufficient to accomplish compliance with the Permit, then the Permittee shall modify the Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department 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 485 days after the effective date of this Consent Order.

D. The Permittee agrees that, no later 485 days after the effective date of this

Consent Order, for every Available Cyanide violation of the Permit, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of the Permit, the Permittee shall pay to the Department the sum of \$400.00 for each and every daily maximum limitation violation and \$800.00 for each and every monthly average violation.

E. Not later than 485 days after the effective date of this Consent Order, the Permittee agrees to comply with the Available Cyanide effluent limitations of its Permit. 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, immediately upon the effective date of this Consent Order, for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by paragraphs A, C, D, and E contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for Force Majeure acts as hereinafter defined as acts which occur beyond the Permittee's control, 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

G. 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, then the Department reserves the right to file a new action against the Permittee.

H. The parties agree that should violations continue to occur after 485 days after the effective date of this Consent Order or as stipulated in paragraph G, above, then

the Department shall be free to issue additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or another 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 28<sup>th</sup> 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.

L. 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 which 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 which 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

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

S. 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.

**Radicispandex Corporation**

By: C. Alan Waine  
Its: VP, Operations  
Date: 3-6-2008

**Alabama Department of  
Environmental Management**

Onis "Trey" Glenn, III  
Director  
Date: May 8, 2008

**CERTIFICATE OF SERVICE**

I, Betty Jacks, hereby certify that I have served Consent Order No. 08-147-CWP by sending the same, postage paid, through the U.S. Mail, as Certified Mail, with instructions to forward and return receipt requested to:

**CERTIFIED MAIL NO.** \_\_\_\_\_.

MR C. ALAN DAVIS  
VICE PRESIDENT - OPERATIONS  
RADICISPANDEX CORPORATION  
1301 INDUSTRIAL PARK DRIVE  
TUSCALOOSA AL 35401

Done this 8th day of May, 2008.

\_\_\_\_\_  
Associate General Counsel