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ALJ Finds That State Permit Would Degrade River Water Quality

December 10, 2010 - Atlanta, GA – Earlier this week, Judge Kristin Miller of the Office of State Administrative Hearings issued a favorable order in Upper Chattahoochee Riverkeeper's (UCR) appeal of a permit issued by the Georgia Environmental Protection Division (EPD) to Forsyth County to discharge six million gallons daily (MGD) of treated wastewater into the Chattahoochee River from its Fowler / Shakerag Wastewater Reclamation Facility.

Although Judge Miller's order significantly narrowed the issues on appeal, the judge ruled favorably to UCR on a key antidegradation issue. In her order, Judge Miller found that the **permitted discharge would degrade the water quality** of the Chattahoochee River and that **EPD misinterpreted the language of the state antidegradation rule**. The judge also found that EPD did not meet the requirements of the rule because **EPD failed to perform the legally required analysis** of the technical and economic feasibility of more stringent pollutant limits that will not degrade high quality of the Chattahoochee River.

In the December 8, 2010 Order, Judge Miller ruled that (1) a "necessity determination requires an analysis of both the technical and economic feasibility of alternative levels of treatment," (2) EPD's and Forsyth County's antidegradation review "did not include the required analysis," and thus (3) "the requirements of the antidegradation rule were not met" by EPD and Forsyth County.

At an evidentiary hearing scheduled for late January 2011, the court will hear testimony on the question of "whether the pollutant levels set forth in the Fowler/Shakerag permit represent a necessary degradation of water quality based on an analysis of the technical and economic feasibility of alternative treatment levels, or whether such degradation is unnecessary."

(cont.)

The new permit will result in the needless degradation of water quality in this pristine part of the Chattahoochee River by allowing excessive levels of phosphorous and fecal coliform to be discharged from the new facility. The level of fecal coliform authorized to be discharged under the new permit is between 10 and 100 times higher than the level permitted in other wastewater permits and exceeds what is allowed even for golf course irrigation. Additionally, the permitted phosphorous levels exceed the in-stream standard for phosphorous recommended by the U.S. Environmental Protection Agency.

Fecal coliform is an “indicator bacteria” which shows the presence of fecal contamination (i.e., human or animal waste) containing microbiological organisms such as pathogenic bacteria and viruses that can cause illnesses in humans. Phosphorous is a nutrient that when discharged in wastewater into a water body such as the Chattahoochee River can cause, among other things, algal blooms and the reduction of oxygen needed to support fish and aquatic organisms.

In September 2010, UCR filed the appeal after learning that EPD issued the wastewater discharge permit with unnecessarily weak permit limits, allowing excessive phosphorous and fecal coliform to enter the high quality waters of the **Chattahoochee River National Recreation Area (CRNRA)**. The CRNRA is **enjoyed by thousands of people each year for fishing, kayaking, and other forms of recreation**. UCR is being represented by Andy Thompson and Steve O’Day, attorneys with Smith, Gambrell, and Russell, LLP, who filed the appeal in the State Office of Administrative Hearings.

UCR Executive Director Sally Bethea said, “Judge Miller agreed with our interpretation of the state’s antidegradation rule and found that EPD did not comply with that rule. At the hearing in January we will show that because it is feasible for the new Shakerag facility to produce a higher quality of effluent that will not degrade the river, the County will not be able to show that it is necessary to degrade the water in the CRNRA.”

Established in 1994, Upper Chattahoochee Riverkeeper (UCR) is an environmental advocacy organization with 4800 members dedicated solely to protecting and restoring the Chattahoochee River, its lakes and tributaries, for the people, fish and wildlife that depend upon it. The Chattahoochee River is the primary drinking water source for 3.5 million people.

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