

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

ROBERT J. BENTLEY
GOVERNOR

SEP 16 2014

CERTIFIED MAIL 91 7108 2133 3936 7223 9469
RETURN RECEIPT REQUESTED

Mr. Robert Thorn
Thorn and Thorn, Inc.
255 Blue Creek Road
Vina, Alabama 35593

RE: Final Administrative Order No. 14-107-WP
Expired General NPDES Permit No. ALG060162
Thorn and Thorn, Inc.
Franklin County (059)

Dear Mr. Thorn:

Please find the enclosed ADEM Administrative Order No. 14-107-WP which requires you to take certain actions at Thorn and Thorn, Inc. at 255 Blue Creek Road, Vina, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Administrative Order has been issued without the consent of Thorn and Thorn, Inc. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

Glenda L. Dean

Glenda L. Dean, Chief
Water Division

GLD/kbj

File: EUO/14-107-WP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel
Schuyler Espy/ADEM, Office of General Counsel
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division
Lee Warren/ADEM, Industrial Municipal Branch/Water Division
Jessica Duncan/ADEM, Industrial Municipal Branch/Water Division

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
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Glenda L. Dean, do hereby certify that I have served the executed Administrative Order Number 14-107-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt #**91 7108 2133 3936 7223 9469**, with instructions to forward and return receipt to:

Mr. Robert Thorn, Owner
Thorn and Thorn, Inc.
255 Blue Creek Road
Vina, Alabama 35593
Franklin County (059)

Done this 16th day of September, 2014



Glenda L. Dean, Chief
Water Division
Alabama Department of Environmental Management

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
THORN AND THORN, INC.)	ADMINISTRATIVE ORDER
255 BLUE CREEK ROAD)	
VINA, FRANKLIN COUNTY, ALABAMA)	No. 14-107-WP
)	
GENERAL NPDES PERMIT No. ALG 060162 (Expired))	
)	

FINDINGS

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.) (hereinafter "AWPCA"); the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Thorn and Thorn, Inc. operates a lumber facility (hereinafter the "Facility") located at 255 Blue Creek Road, Vina, Franklin County, Alabama. As set forth in this Administrative Order, Thorn & Thorn, Inc. discharges pollutants from point source(s) into Blue 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 AWPCA.

4. On July 3, 2002, the Department reissued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG060162 (hereinafter the "Permit"). Thorn & Thorn, Inc. received coverage under the Permit effective August 1, 2002

which established limitations on the discharge of pollutants from a point source, designated therein as outfall number DSN001-1 into Blue Creek, a water of the State. The Permit required that Thorn and Thorn, Inc. monitor its discharges and submit semi-annually Discharge Monitoring Reports (hereinafter “DMRs”) to the Department describing the analytical results. The Permit required that Thorn and Thorn, Inc. maintain in good working order all systems used by it to achieve compliance with the terms and conditions of the Permit. Thorn and Thorn, Inc. was also required to maintain documentation and implementation of a Best Management Practices (hereinafter “BMP”) plan.

5. Permit Condition II. F. 1. a. required that the permittee authorized to discharge under the Permit, who wished to continue to discharge upon the expiration of the Permit, submit a Renewal Notice of Intent (hereinafter “NOI”) to be covered by the reissued General Permit. Such NOI was to be submitted at least ninety days prior to the expiration date of the Permit. Permit Condition II. F. 1. b. stated that failure of the permittee to submit a NOI for reauthorization under the permit at least ninety days prior to the Permit’s expiration would void the automatic continuation of the authorization to discharge under the Permit as provided by ADEM Administrative Code r. 335-6-6-.06. Should the Permit not be reissued for any reason prior to its expiration date, permittees who failed to meet the ninety day submittal deadline will be illegally discharging without a permit after the expiration date of the Permit.

6. General Permit ALG060162 expired on June 30, 2007, and Thorn and Thorn, Inc. failed to re-apply for coverage in 2007. Thorn & Thorn, Inc. also failed to re-apply for coverage for the 2012 permit cycle.

7. On December 4, 2012, the Department conducted a Compliance Evaluation Inspection (hereinafter “CEI”) at the Facility. The Department documented the following during the inspection and during a review of the Facility file: The Permit coverage had expired on June 30, 2007 and a renewal NOI with fee had not been submitted to the Department. Thorn and Thorn, Inc. did not submit semi-annual DMRs for outfall DSN001-1 from July 2005 through the inspection date. Thorn and Thorn, Inc. failed to maintain in good working order all systems used by it to achieve compliance. The Department observed several BMP issues at

the Facility, including oil staining on the ground by the saw mill, fresh sawdust adjacent to a drainage way, and storm water with a sheen and floating solids. The Facility was discharging at the time of inspection. On-site erosion was also observed.

8. Ala. Code § 22-22-9(e) (2006 Rplc. Vol.) requires a person to respond to a Notice of Violation (hereinafter "NOV") within the time frame specified by the Department.

9. On January 10, 2013, Thorn and Thorn, Inc. was issued a Notice of Violation and provided a written copy of the December 4, 2012 CEI Report. The NOV required that Thorn and Thorn, Inc. submit to the Department within thirty days from receipt of the NOV a complete NOI and a \$770 application fee for re-issuance of the Permit. The NOV further notified Thorn and Thorn, Inc. that the Department was considering the issuance of an Order with monetary penalty. On February 7, 2014, Robert Thorn, the Operator, contacted the Department with questions regarding the NOV; however, neither an application nor an application fee have been received by the Department in response to the January 10, 2013 NOV.

10. Thorn and Thorn, Inc. failed to respond to the NOV within the specified time, in violation of Ala. Code § 22-22-9(e) (2006 Rplc. Vol.).

11. ADEM Administrative Code r. 335-6-6-.03(2) states that no person required to apply for a stormwater discharge permit by 40 CFR 122.26 (2000) shall discharge pollutants into waters of the State without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Permit. New dischargers shall obtain a valid NPDES Permit, coverage under a valid General Permit, or coverage under a valid NPDES Registration prior to conducting any activity for which application for a stormwater discharge permit is required by 40 CFR 122.26 (2000).

12. Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) requires every person to apply for and obtain a permit before discharging new or increased pollution into any waters of the state.

13. On February 24, 2014, the Department conducted a follow-up CEI due to Thorn & Thorn, Inc.'s failure to respond to prior correspondence and to determine if the Facility was

still in operation. The Department noted that Thorn & Thorn, Inc. was still operating without an NPDES permit in violation of ADEM Admin. Code r. 335-6-6-.03(2) and Ala. Code §22-22-9(e). The Department also noted that Thorn failed to implement adequate Best Management Practices (BMPs), as the Facility was covered with sawdust piles and there were no BMPs to control drainage from the site.

14. 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 such person; the economic benefit that delayed compliance may have confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided; however, the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Violations consisted of failing to properly implement BMPs, failing to reapply for a permit (2007 and 2012) and failing to respond to an NOV within the specified time period. Considering the general nature of each violation, the magnitude and duration of any non-compliant discharge(s), the characteristics of any pollutant discharged, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public, the Department determined the base penalty to be \$13,000.00.

B. **THE STANDARD OF CARE:** In consideration of the standard of care provided by Thorn & Thorn, Inc., the Department noted that violations continued at the Facility after enforcement actions were taken by the Department. Failure to submit a complete application

was a non-technical requirement and easily avoidable. Therefore, the Department enhanced the penalty by an additional \$6,500.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Thorn and Thorn, Inc. avoided certain costs associated with BMPs, sample collection and analysis, and the submittal of applications. The Department has no indication that Thorn and Thorn, Inc. was monitoring for its stormwater semi-annually as required by the Permit. The Department has determined that there has been an economic benefit of \$2,000.00 associated with the violations cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is not aware of any efforts made by Thorn and Thorn, Inc. to minimize or mitigate the effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Thorn and Thorn, Inc. has a history of violations as noted in this order. Permit ALG060162 expired June 30, 2007, and Thorn and Thorn, Inc. did not reapply for permit coverage (2007 and 2012). In consideration of the history of previous violations by Thorn and Thorn, Inc., the Department enhanced the penalty by an additional \$2,500.00.

F. THE ABILITY TO PAY: Thorn and Thorn, Inc. has not alleged an inability to pay the civil penalty.

G. The civil penalty is summarized in Attachment A.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, it is hereby ORDERED:

A. That, not later than forty-five days after issuance of this Order, Thorn and Thorn, Inc. shall pay to the Department a civil penalty in the amount of **\$24,000.00** for the violations stated herein.

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 Thorn and Thorn, Inc. shall prepare and submit to the Department, not later than thirty days after the date of issuance of this Order a complete General NPDES Permit application with the complete application fee. The application fee for a General NPDES Permit is currently \$1,155.

D. That, immediately upon the effective date of coverage, Thorn and Thorn, Inc. must comply with all terms, conditions, and limitations of its NPDES Permit.

E. That this Order shall not affect Thorn & Thorn, Inc.'s obligation to comply with any Federal, State, or local laws or regulations.

F. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

G. That, should any provision of this 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 provision hereof shall remain in full force and effect.

H. That, except as otherwise set forth herein, this 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 Thorn and Thorn, Inc. of its obligations to comply in the future with any permit.

I. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Thorn and

Thorn, Inc. for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 16th day of September, 2014.

Mamey Elliott

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Attachment A

**Thorn and Thorn Inc
Vina, Franklin County
Expired GP ALG060162**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to apply for a permit	1	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00
Failure to implement BMPs	2	\$ 5,000.00	\$ 2,500.00	\$ -
Failure to adequately respond to NOV	1	\$ 3,000.00	\$ 1,500.00	\$ -
	4			

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	

\$13,000.00	\$6,500.00	\$2,500.00
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$22,000.00
Mitigating Factors (-)		
Economic Benefit (+)		\$2,000.00
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$24,000.00
Total Adjustments (+/-)		\$0.00
FINAL PENALTY		\$24,000.00

Footnotes

*See the "Findings" portion of the Order for a detailed description of each violation and the penalty factors