

**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

**KAY IVEY**  
GOVERNOR

DECEMBER 6, 2017

**CERTIFIED MAIL 91 7108 2133 3936 7151 5564**  
**RETURN RECEIPT REQUESTED**

Darren Bradham  
d/b/a Goo Goo Car Wash  
7641 Crestwood Boulevard  
Birmingham, AL 35210

RE: Consent Order 18-018-CWP  
General NPDES Permit No. ALG140853  
Goo Goo Car Wash  
7641 Crestwood Boulevard  
Birmingham, AL 35210  
Jefferson County (073)

Dear Mr. Bradham:

Please find the enclosed ADEM Consent Order No. 18-018-CWP which requires you to take certain actions at the Goo Goo Car Wash located at 7641 Crestwood Boulevard in Birmingham, Alabama in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Darren Bradham d/b/a Goo Goo Car Wash. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

*Glenda L. Dean*

Glenda L. Dean, Chief  
Water Division

GLD/mfc

File: ECO/18-018-CWP

Enclosure

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

**ISSUED - 12/06/2017**

**MAILED - 12/06/2017**

**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)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Darren Bradham** )

**d/b/a Goo Goo Car Wash** )

7641 Crestwood Boulevard )

Birmingham, Alabama, Jefferson County )

**GENERAL NPDES PERMIT ALG140853** )

Consent Order No. 18-018-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Darren Bradham (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. Darren Bradham is the owner/operator of a car wash facility (hereinafter "Facility") known as Goo Goo Car Wash, located at 7641 Crestwood Boulevard, in Birmingham, Jefferson County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17 as amended.

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 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. The Department reissued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG140853 (hereinafter "the Permit") to Darren Bradham (hereinafter "the Permittee") on December 11, 2013, effective January 1, 2014. The Permit establishes limitations on the discharge of pollutants from a point source, designated therein as outfall number

DSN007-1, to Shades Creek, a water of the State. The Permit requires that the Permittee monitor his discharges and submit Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

5. Permit Condition I. A. requires that discharges be limited and monitored as specified in the Permit. The Permittee reported a Total Phosphorous level of 2.23 mg/l in December 2015, a violation of the daily maximum Total Phosphorus limitation of 1.0 mg/l.

6. Permit Condition I. C. 1. b. requires the Permittee to submit monthly DMRs for outfall DSN007-1 on a semi-annual basis. The first six months of DMRs should be submitted to the Department by July 28<sup>th</sup> of each year, and the second six months of DMRs should be submitted to the Department by January 28<sup>th</sup> of each year.

7. Permit Condition I. A. requires that the permitted discharge shall have no sheen, and there shall be no discharge of visible oil, floating solids, or visible foam in other than trace amounts. Permit Condition I. B. 4. b. requires that all records to be kept for a period of three years shall be kept at the Facility or an alternate location approved by the Department in writing and shall be available for inspection. Permit Condition IV. A. 1. requires the Permittee to prepare and implement a Best Management Practices (BMP) Plan. Permit Condition IV. A. 3. a. requires that when requested by the Director or his designee, the Permittee shall make the BMP Plan available for Department review. Permit Condition IV. A. 4. a. requires that a copy of the BMP Plan shall be maintained at the Facility and shall be available for inspection by representatives of the Department. Permit Conditions IV. A. 4. b. and c. require the Permittee to maintain onsite a log of the twice a week BMP inspections and BMP training records for a period of three years. Permit Condition II. B. 1. requires the Permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of the Permit.

8. On August 17, 2016, the Department conducted a Compliance Evaluation Inspection at the Facility in response to a complaint received by the Department on August 4, 2016. During the inspection, Departmental personnel observed that the Permittee's discharge into the stormwater sewer

was foamy, in violation of Permit Condition I. A. Also at the time of the inspection, the Permittee was not maintaining onsite copies of the Permit, DMRs, laboratory records, or sampling records, in violation of Permit Condition I. B. 4. b. In addition, the Department noted that the Permittee's BMP Plan was not available for review, in violation of Permit Condition IV. A. 1. Lastly, the Permittee's BMP inspection and training records were not available for onsite review, in violation of Permit Conditions IV. A. 4. b. and c.

9. Ala. Code § 22-22-9(e) requires that a person submit a full report in response to a Notice of Violation (hereinafter "NOV") within such time as specified by the Department.

10. The Department issued an NOV to the Permittee on November 7, 2016. The NOV required the Permittee to submit the overdue/missing DMRs via the Department's E2 system, the noncompliance forms, and a written report addressing the violations cited in the NOV to the Department within thirty days of receipt of the NOV.

11. On December 13, 2016, the Department received a written response to the November 7, 2016 NOV, along with noncompliance forms in response to the November 7, 2016 NOV; however, the Permittee failed to submit the missing/overdue DMRs via the Department's E2 system, in violation of Ala. Code § 22-22-9(e) and Permit Condition I. C. 1. b. The NOV response stated that the catch basin was being enhanced and the soap products were being reviewed "to prevent foamy discharge into the stormwater sewer."

12. On November 17, 2016, the Department conducted a Compliance Sampling Inspection (hereinafter "CSI") at the Facility in response to a complaint received by the Department on November 1, 2016. During the inspection, the Department noted the discharge entering the stormwater sewer was foamy, in violation of Permit Condition I. A., and it also had a sewage odor. A sample of the discharge was obtained by the Department at the time of inspection, and the oil & grease level was 41.79 mg/l, in violation of the daily maximum oil and grease limitation of 15 mg/l in Permit Condition I. A. The E. coli level of the sample was 686.7 MPN/dL, which is higher than would be expected from a car wash discharge and indicates improper maintenance of the system, in violation of Permit Condition II.B.1. Also at the time of the inspection, the Permittee was not maintaining onsite copies of the Permit, DMRs, laboratory records, or sampling records, in violation of Permit Condition I. B. 4. b. In addition, the Department noted that the Permittee's BMP Plan was not available for review, in

violation of Permit Condition IV. A. 1. Lastly, the Permittee's BMP inspection and training records were not available for onsite review, in violation of Permit Conditions IV. A. 4. b. and c.

13. The Department issued an NOV to the Permittee on January 3, 2017. The NOV required the Permittee to submit to the Department within thirty days of receipt of the NOV: the previously requested overdue/missing DMRs via the Department's E2 system, noncompliance forms, and a written report including corrective actions taken to address the foamy discharge and the oil and grease effluent exceedance and also detailing results of an investigation into possible sewage sources in the discharge.

14. On January 20, 2017, the Permittee submitted the overdue/missing DMRs via the Department's E2 system. On March 30, 2017, the Permittee submitted to the Department the written response and noncompliance forms required by the January 3, 2017 NOV. The NOV response was late, in violation of Ala. Code § 22-22-9(e).

15. ADEM Admin Code r. 335-6-10-.06(b) states: "State waters shall be free from floating debris, oil, scum, and other floating materials attributable to sewage, industrial wastes or other wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use."

16. ADEM Admin. Code r. 335-6-10-.09(5)(e)6. states that discharges of taste, odor, and color-producing substances attributable to sewage, industrial wastes, or other wastes are allowable in only such amounts, whether alone or in combination with other substances, as will not unreasonably affect the aesthetic value of waters for any use under this classification.

17. On May 15, 2017, the Department conducted a CSI at the Facility in response to a complaint received by the Department on May 12, 2017. During the inspection, the Department observed a blue/green foamy discharge with a sewage odor entering the stormwater sewer, in violation of Permit Condition I. A. Samples of the discharge taken during the inspection indicated an E. coli level of 870.4 MPN/dL, which is higher than would be expected from a car wash discharge and indicates improper maintenance of the system, in violation of Permit Condition II.B.1. The Department also observed foam and a blue/green color in Shades Creek at the location where the stormwater sewer entered the Creek. The Permittee therefore violated ADEM Admin. Code rs. 335-6-10-.06(b) and 335-6-10-.09(5)(e)6. by discharging wastewater into Shades Creek, a water of the state, in amounts sufficient to be unsightly and which unreasonably affected the aesthetic value of the



receiving water.

18. On June 1, 2017, the Department conducted a CSI at the Facility. During the inspection, the Department observed a greenish foamy discharge with a sewage odor entering the stormwater sewer, in violation of Permit Condition I. A. Samples of the discharge taken during the inspection indicated an E. coli level of 2419.6 MPN/dL, which is higher than would be expected from a car wash discharge and indicates improper maintenance of the system, in violation of Permit Condition II.B.1. The Department also observed foaming and a green color in Shades Creek at the location where the stormwater sewer entered the Creek. The Permittee therefore violated ADEM Admin. Code rs. 335-6-10-.06(b) and 335-6-10-.09(5)(e)6. by discharging wastewater into Shades Creek, a water of the state, in amounts sufficient to be unsightly and which unreasonably affected the aesthetic value of the receiving water.

19. A review of the Permittee's Departmental files indicates that the Permittee failed to submit the DSN007-1 DMRs for first six months of 2017, which were due July 28, 2017, in violation of Permit Condition I. C. 1. b.

20. On October 5, 2017, the Permittee notified the Department by telephone that the car wash discharge was connected to the sanitary sewer system in August 2017.

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

22. 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 the 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., as amended, 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 which delayed compliance may have conferred 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 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, that 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 (summarized in Attachment #1), the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY: Based on information available to the Department, violations of the Permit, the ADEM Admin. Code, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: The Permittee failed to maintain the car wash system to prevent water quality exceedances, to maintain a BMP Plan, to maintain records, and to timely submit DMRs and NOV responses. The Department considers these violations to be easily avoidable. In consideration of the standard of care provided by the Permittee, the Department has enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee avoided costs associated with failure to collect and analyze samples required for the first six months of 2017, failure to maintain and implement a BMP plan, and failure to properly maintain the car wash system, which conferred an economic benefit upon the Permittee. In consideration of this, the Department has enhanced the penalty.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations. The Department previously issued enforcement actions to the Permittee for the discharge of foam, effluent violations, late and non-submittal of DMRs, and recordkeeping violations. In consideration of such history of previous violations, the Department has enhanced the penalty.

F. The civil penalty is summarized in Attachment A.

### **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 penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$20,000.00 in settlement of the violations alleged herein within **forty-five days** after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance of this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. 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. Within **ten days** after the date of issuance of this Consent Order, the Permittee shall submit written certification to the Department confirming connection to the sanitary sewer system, including the exact date of connection. Also within **ten days** after the date of issuance of this Consent Order, the Permittee shall submit a written request for withdrawal of the pending General NPDES Permit application.

D. After the issuance of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or requirement dates set forth



in or established by paragraph C. above. The stipulated civil penalties for failure to meet each milestone or any 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 paragraph C. the Department reserves the right to file a new action against the Permittee.

E. Cumulative stipulated penalties described in paragraph D. 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 **thirty days** from the issuance of this Consent Order, then the Department reserves the right to issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

F. Payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28<sup>th</sup> day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

G. 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.

H. 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.

I. The Permittee is not relieved from any liability if he fails to comply with any provision of this Consent Order.

J. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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 his 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. The Permittee shall submit this information so that it is received by 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.

K. 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 other Orders as may be issued by the Director, by litigation initiated by the Department, or by 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 such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

L. 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.

M. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

N. Final approval and entry into this Consent Order are subject to the requirements 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 proposed Consent Order.

O. 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.

P. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.

Q. 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 his obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**Darren Bradham**  
**d/b/a Goo Goo Car Wash**

**ALABAMA DEPARTMENT OF**  
**ENVIRONMENTAL MANAGEMENT**

EXECUTED AND ISSUED:

By: 

By:



Its:

Member

Its:

Deputy Director

Date:

10/10/17

Date:

DECEMBER 6, 2017

**Attachment A**

**Goo Goo Car Wash  
Jefferson County  
ALG140853**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Water Quality Violations (Instream Color and Foam)	4	\$ 7,000.00	\$ 3,000.00	
Discharge of Foam	4	\$ 4,000.00	\$ 3,000.00	\$ 1,000.00
Failing to maintain BMP Plan	2	\$ 1,000.00	\$ 500.00	\$ 500.00
Failure to maintain records	2	\$ 200.00	\$ 100.00	\$ 100.00
Late DMR submittal	2	\$ 200.00	\$ 100.00	\$ 100.00
Failure to submit DMRs	1	\$ 500.00	\$ 250.00	\$ 250.00
Effluent violations (total phosphorus and oil & grease)	2	\$ 700.00		\$ 150.00
Late NOV response	2	\$ 150.00	\$ 150.00	
Failure to maintain car wash system	3	\$ 4,000.00	\$ 2,000.00	

\$17,750.00	\$9,100.00	\$2,100.00
Total (A)	Total (B)	Total (C)

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

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	-\$14,950.00
<b>Total Adjustments (+/-)</b>	-\$14,950.00



<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]	\$28,950.00
<b>Mitigating Factors (-)</b>	
<b>Economic Benefit (+)</b>	\$6,000.00
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	
<b>INITIAL PENALTY</b>	\$34,950.00

**Total Adjustments (+/-)**      -\$14,950.00

**FINAL PENALTY**      \$20,000.00

Footnotes

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