

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

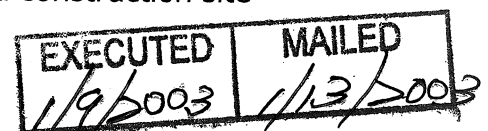
IN THE MATTER OF)
)
COVINGTON COUNTY COMMISSION)
CONECUH RIVER 040-STEAMPLANT ROAD)
GANTT, COVINGTON COUNTY, ALABAMA)
NPDES# ALR100202)

CONSENT ORDER NO. 03-050-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act §402, 33 U.S.C. § 1342, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. The Covington County Commission, (also referred to as the "Permittee") is an Alabama government agency operating a construction site



(Steamplant Road) and other regulated land disturbing activity located off US Highway 29 South in Gantt, Alabama (Township 5 North, Range 15 East, Section 24, Covington County, Alabama). If the Permittee's construction activities are not properly managed, sediment and other pollutants in untreated stormwater runoff can be discharged into Point "A" Lake and the Conecuh River, waters of the State, both classified for Swimming and Other Whole Body Water-Contact Sports, and Fish & Wildlife.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), §§ 22-22A-4(n), as amended, 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 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. On January 30, 1993, the Department issued authorization # ALR100202 to the permittee to discharge treated stormwater runoff to Point "A" Lake and the Conecuh River, both waters of the State of Alabama, under NPDES general permit ALG610000 for construction activities associated with the Steamplant Road project.

5. Under the terms of the general permit and applicable NPDES regulations, The Permittee must comply with all requirements of the general permit,

including requirements regarding implementation and maintenance of effective, Best Management Practices ("hereinafter BMP").

6. Part II,B,2.,a., of NPDES general permit ALG610000 requires The Permittee to prepare and implement a comprehensive BMP plan designed to prevent/minimize the discharge of all sources of pollution (i.e., sediment, trash, garbage, debris, oil and grease, chemicals, materials, etc.) in stormwater runoff to waters of the State.

7. Inspections by Department staff on August 10, 2001 and January 8, 2002, revealed that the permittee did not fully implement and maintain effective BMPs for the control of pollutants in stormwater runoff and/or did not comply with all of the terms and conditions of NPDES general permit ALG610000, resulting in the uncontrolled discharge of sediment and other pollutants to Point "A" Lake and the Conecuh River, both waters of the State. Notice of Violation (NOV) letters were sent by the Department on August 17, 2001 and February 25, 2002, notifying the permittee of these violations.

8. The permittee neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AWPCA, the permittee has consented to the terms of this Consent Order.

9. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of the permittee, it is hereby ORDERED:

A. That immediately upon the effective date of this Consent Order, the permittee shall fully implement and regularly maintain effective BMPs to the maximum extent practicable to prevent/minimize untreated discharges of pollutants (sediment) in stormwater from leaving regulated construction activity, conducted or controlled by the permittee.

B. That the permittee shall immediately, upon the date of execution of this Consent Order and continuing thereafter shall insure immediate and future compliance with the AWPCA, ADEM rules, including the requirement to obtain NPDES permit coverage prior to commencing regulated activities, and all NPDES permit limitations, terms, and conditions for all regulated sites/facilities, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Order.

C. That within fifteen (15) days of the effective date of this Consent Order the permittee shall submit a detailed plan prepared by a Professional Engineer (PE) registered in the state of Alabama or a Department recognized Qualified Credentialed Professional (QCP) for the stabilization and/or removal of sediment and other pollutants deposited offsite and in Point "A" Lake, the Conecuh River, and other waters of the State.

D. Within fifteen (15) days of the effective date of this Consent Order, the permittee shall submit a proposed, detailed compliance schedule certified by a Professional Engineer (PE) registered in the state of Alabama or a Department recognized QCP to accomplish the tasks in paragraph C above within sixty (60) days of the effective date of this Consent Order.

E. Within sixty-five (65) days of the effective date of this Consent Order, the permittee shall submit a certification by a PE registered in the state of Alabama or a Department recognized QCP that all deficiencies have been corrected, stabilization and/or removal of sediment, and full compliance with the requirements of the Department's construction stormwater program has been achieved at the Steamplant Road site.

F. That not later than forty-five (45) days after the effective date of this Consent Order, the permittee shall prepare and submit for the Department's review a written report detailing the results of a comprehensive evaluation by a PE registered in the state of Alabama or a Department recognized QCP of all ADEM NPDES regulated construction sites owned or operated by the permittee, and their associated receiving waters. This report must indicate who conducted the evaluation, their PE or QCP designation, how the evaluation was conducted, and shall contain the results of the evaluation and a compliance schedule for correction of any deficiencies, if any, to be completed.

G. That not later than sixty (60) days after the effective date of this Consent Order the permittee shall correct any deficiencies noted in the comprehensive evaluation.

H. That not later than sixty-five (65) days after the effective date of this Consent Order a PE registered in the state of Alabama or a Department recognized QCP shall certify that all work has been accomplished as determined necessary by the results of the comprehensive evaluation.

I. 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.

J. 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.

K. That the permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. That, 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 a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. 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

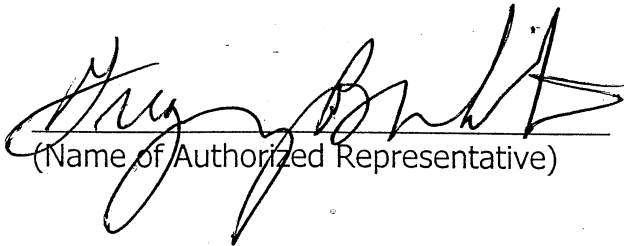
the reasonable control of the permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable control of the permittee) and which delays or prevents performances 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 (10) 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 specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

M. 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 shall 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. That, by agreement of the parties, 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.

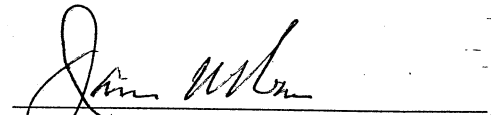
COVINGTON COUNTY COMMISSION


(Name of Authorized Representative)

Chairman
Title

Date Signed: 1-06-03

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


James W. Warr
Director

Date Signed: 9 Jan 2003