

**LANCE R. LEFLEUR**  
DIRECTOR



**ROBERT J. BENTLEY**  
GOVERNOR

**Alabama Department of Environmental Management**  
**adem.alabama.gov**

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

**OCT 30 2013**

**CERTIFIED MAIL #91 7199 9991 7030 3346 7719**

Mr. Rudy Abbott, Chairman  
Calhoun County Commission  
1702 Noble Street Suite 103  
Anniston, Alabama 36201

**Subject: Consent Order No. CW-14-007-CWP**  
Calhoun County Municipal Separate Storm Sewer System (MS4)  
NPDES Permit ALR040004  
Calhoun County (015)

Dear Commissioner Abbott:

Please find enclosed Consent Order No. 14-007-CWP, which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Calhoun County and the Department. Please note that, according to Order Item A., the assessed civil penalty must be paid within forty-five days of the effective date of this Order.

Should you have any questions concerning this matter, please contact Marla Smith at (334) 270-5616.

Sincerely,

*GLENDAL. DEAN*

Glenda L. Dean, Chief  
Water Division

GLD/MSS

Enclosure

**Cc:** Thomas L. Johnston, ADEM  
Jeffery W. Kitchens, ADEM  
Marla Smith, ADEM  
Mark Welsh, Calhoun County

**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:

Calhoun County

Municipal Separate Storm Sewer System (MS4)  
NPDES Permit No. ALR040004  
Calhoun County, Alabama

CONSENT ORDER NO. 14-007-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Calhoun County (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl. Vol.), the Alabama Water Pollution Control Act, §§ 22-22-1 to 22-22-14, Ala. Code (2006 Rpl. Vol.), and the ADEM Administrative Code of Regulations (ADEM Admin. Code r.) promulgated pursuant thereto.

***FINDINGS***

- A. The Permittee operates a municipal separate storm sewer system (hereinafter "MS4") located in Calhoun County, Alabama.
- B. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).
- C. 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 through 22-22-14 (2006 Rplc. Vol.).

D. On January 31, 2011, the Department issued to the Permittee a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit ALR040004 (hereinafter "the Permit"), which established limits on the discharge of pollutants from the MS4 to waters of the State. The Permit was modified on February 24, 2012. The Permit expires January 31, 2016.

E. Part II.A.4 of the Permit required the operator to submit a storm water management program (SWMP) plan to the Department within six months of coverage under the Permit. The SWMP plan was due to the Department on or about August 1, 2011.

F. Part III of the Permit states the requirements for SWMP plans.

G. On February 16, 2012, the Department issued the Permittee a Notice of Violation (NOV) for non-submittal of the SWMP plan as required under Part II.A.4 of the Permit. In the NOV, the Permittee was required to submit the SWMP plan within thirty days of receipt of the NOV.

H. On June 15, 2012, the Department received the SWMP from the Permittee.

I. Part V.C.1 of the permit requires the Permittee to submit an annual report (hereinafter "Annual Report") to the Department no later than March 31<sup>st</sup> of each year.

J. On April 16, 2012, the Department received the 2011-2012 Annual Report from the Permittee.

K. The Department issued the Permittee a NOV for non-submittal of the 2012-2013 Annual Report on April 18, 2013. The Department received the 2012-2013 Annual report on April 24, 2013 from the Permittee.

#### ***DEPARTMENT'S CONTENTIONS***

L. On July 10, 2012, the Department conducted an audit of the Permittee's MS4. During this audit, Department personnel informed the Permittee that the submitted SWMP plan that outlines best management practices (BMPs) that the Permittee implements for each of the six minimum control measures was inadequate and that the 2011-2012 Annual Report was insufficient in detailing the status of the Permittee's compliance with the permit conditions, the measurable goals for the six minimum control measures, summary of stormwater activities the County plans to undertake within the upcoming permitting year. During the audit, Department personnel determined that the Permittee had not implemented any of the BMPs as outlined in the SWMP plan.

M. In a letter dated October 10, 2012, the Department informed the Permittee of the findings of the July 10, 2012 audit. In this letter, the Department directed the Permittee to submit a SWMP plan meeting all the Permit requirements to the Department by March 31, 2013. The Department provided the Permittee with a SWMP plan template that would ensure that all minimum control measures, along with sufficient level of detail of each measure, were included in the SWMP. The Department has not received a revised SWMP plan.

N. In May 2013, the Department conducted a review of the submitted 2012-2013 Annual Report for the Permittee's MS4. Based on the review of the aforementioned document, along with the July 2012 audit, the Department determined that the County is deficient with the permit requirements as specified below:

1. Part III.B.1 details the requirements for the Public Education and Outreach Control Measure. The SWMP did not meet the requirements of condition Part III.B.1, as follows:
  - a. How the Permittee plans to inform individuals and households about the steps they can take to reduce storm water pollution.
  - b. The distribution of educational materials to the community and outreach activities about the impacts of discharges on water bodies and the steps that the public can take to reduce pollutants in storm runoff to the maximum extent practicable is inadequate.
  - c. The Permittee does not specify how it plans to inform individuals and groups on how to become involved in the storm water program.
  - d. The Permittee does not specify who the target audiences for the education program who are likely to have significant water impacts and why those target audiences were selected.
  - e. The Permittee does not specify the target pollutant sources the public education program is designed to address.
  - f. The Permittee does not specify how this minimum control measure will be evaluated for success.
2. Part III.B.2 details the requirements for the Public Involvement/Participation Measure. The SWMP did not meet the requirements of condition Part III.B.2, as follows:

- a. The Implementation of a process to facilitate opportunities for direct action, education, and volunteer programs is inadequate.
  - b. The Permittee does not specify how the public is involved in the development and submittal of the storm water management program.
  - c. The Permittee does not specify its plan to actively involve the public in the development and implementation of the program.
  - d. The Permittee does not specify the targeted audiences for the public involvement program.
  - e. The Permittee does not specify how this minimum control measure will be evaluated for success.
3. Part III.B.3 details the requirements for the Illicit Discharge Detection and Elimination (IDDE) Control Measure. The SWMP did not meet the requirements of condition Part III.B.3, as follows:
- a. The Permittee does not implement an ongoing program to detect and eliminate illicit discharges into the Permittee's small MS4, and improper disposal, including spills not under the purview of another responding authority, into the MS4 owned or operated by the Permittee, to the MEP.
  - b. The Permittee's existing storm sewer map has not been updated on an annual basis and shall include the following: location of all outfalls and the names and location of all waters of the State that receive discharges from those outfalls; structural BMPs owned, operated, and maintained by boundaries of the Permittee's watershed.
  - c. The Permittee has not to the extent allowable under State and local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system that are not listed in Part I.B. of the permit, and implement appropriate enforcement procedures and actions. The ordinance or other regulatory mechanism shall include escalating enforcement procedures and actions.
  - d. The Permittee does not implement a program to review and update the IDDE ordinance to prohibit and eliminate illegal discharges and/or dumping into the MS4. The ordinance or other regulatory mechanism shall be reviewed on an annual basis.

- e. The Permittee does not adequately inform the public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste.
  - f. The Permittee does not specify the plan to detect and address illicit discharges to the MS4, including discharges from illegal dumping and spills. This plan is to include, at a minimum:
    - i. Procedures for locating priority areas
    - ii. Procedures for tracing the source of an illicit discharge
    - iii. Procedures for removing the source of the illicit discharge
    - iv. Procedures for program evaluation and assessment
  - g. The Permittee does not specify how this minimum control measure will be evaluated for success.
4. Part III.B.4 details the requirements for the Construction Site Storm Water Runoff Control Measure. According to Part III.B.4., the Permittee had 730 days from issuance of the Permit (approximately February 1, 2013) to comply with this Part of the Permit. The SWMP did not meet the requirements of condition Part III.B.4, as follows:
- a. The Permittee did not implement within 730 days from the effective date of the Permit an ordinance or other regulatory mechanism to require erosion and sediment controls, sanctions to ensure compliance, and to provide all other authorities needed to implement the requirements of Part III.B.4 of the Permit.
  - b. The Permittee does not specify the procedures for the periodic inspection of qualifying construction sites to verify the use of appropriate erosion and sediment control practices.
  - c. The Permittee does not specify the frequency and prioritization of inspection activities.
  - d. The Permittee does not specify the specific procedures for construction site plan (including erosion prevention and sediment controls) review and approval: The MS4 procedures must include an evaluation of plan completeness and overall BMP effectiveness.
  - e. The Permittee does not specify the procedures to notify ADEM of non-compliant construction sites discovered during periodic inspections.

- f. The Permittee does not specify procedures for receipt and consideration of information submitted by the public.
  - g. The Permittee does not specify how this minimum control measure will be evaluated for success.
- 5. Part III.B.5 details the requirements for the Post-Construction Storm Water Management in New Development and Redevelopment Control Measure. According to Part III.B.5., the Permittee had 730 days from issuance of the Permit (approximately February 1, 2013) to comply with this Part of the Permit. The SWMP did not meet the requirements of condition Part III.B.5, as follows:
  - a. The Permittee did not implement within 730 days from the effective date of the Permit project review, approval, and enforcement procedures for qualifying new development and redevelopment projects.
  - b. The Permittee did not implement an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects.
  - c. The Permittee does not specify the procedures for development site plan review and approval to ensure post-construction BMPs are addressed.
  - d. The Permittee's implementation of adequate long-term operation and maintenance of BMPs is inadequate.
    - i. The Permittee does not specify corrective actions, to include follow-up inspections, to current maintenance of BMPs.
  - e. The Permittee does not specify the procedures to review and evaluate policies and ordinances related to building codes, or other local regulations, with a goal of identifying regulatory and policy impediments to the installation of green infrastructure and low-impact development techniques.
  - f. The Permittee does not specify how this minimum control measure will be evaluated for success.
- 6. Part III.B.6 details the requirements for the Pollution Prevention/Good Housekeeping for Municipal Operations Control Measure. The SWMP did not meet the requirements of condition Part III.B.6, as follows:

- a. The Permittee does not specify the municipal operations and industrial activities within its MS4 that are impacted by this minimum control measure.
  - b. The Permittee does not specify the maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to its MS4.
  - c. The Permittee does not specify detailed controls for reducing or eliminating the discharge from roadways, municipal parking lots, maintenance and storage yards, and fleet and maintenance shops with outdoor storage areas.
  - d. The Permittee does not specify the procedures for the proper disposal of waste removed from the MS4 and municipal operations, including materials such as dredge spoil, accumulated sediments, floatables, and other debris.
  - e. The Permittee does not specify how this minimum control measure will be evaluated for success.
7. Part V.C.1 details the requirements for the Reporting. The Annual Report did not meet the requirements of condition Part V.C.1, as follows:
- a. The Permittee does not specify the status of compliance with permit conditions, an assessment of the appropriateness of the identified BMPs, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measureable goals for each of the minimum control measures.
  - b. The Permittee does not analyze the monitoring data to assess the success of the program at reducing the discharge of pollutants to the MEP.
  - c. The Permittee does not specify a summary of the storm water activities planned for the next reporting cycle, to include an implementation schedule.
  - d. The Permittee does not specify proposed changes to the SWMP, including changes to any BMPs or any identified measureable goals that apply to the program elements.
  - e. The Permittee does not specify if it was relying on another government entity to satisfy some of your permit obligations.



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 the Permittee; the economic benefit that delayed compliance may have conferred 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 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, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** The Department noted numerous violations of the Permit. The Department considered the general nature of the violations and any available evidence of irreparable harm to the environment or threat to public.

B. **THE STANDARD OF CARE:** By committing the violations alleged herein, the Permittee did not exhibit a standard of care commensurate with the applicable program requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Based on the information available to the Department, the Department has not been able to ascertain whether the violation noted herein conferred a significant economic benefit upon the Permittee.

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:** In 2011, 2012 and 2013, the Permittee failed to submit to the Department the Annual Report in a timely manner. The Permittee failed to submit to the Department an adequate SWMP plan in a timely manner.

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 Consent Order is a negotiated settlement between the Department and the Permittee. Therefore, in the spirit of cooperation and the desire to resolve this matter

amicably and without incurring the unwarranted expense of litigation, the Department has determined the amount of the penalty it believes is warranted in this matter (see Attachment A).

H. The Department neither admits nor denies the Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ***PERMITTEE'S CONTENTIONS***

A. Permittee desires to in a spirit of intergovernmental cooperation settle this matter. Lest it seem however that the Permittee has done nothing concerning certain potential stormwater problems and documents the following is noted:

- In the vicinity of the Permittee's construction landfill there has for a number of years been provision for oil, paint and batteries to be left for them to be taken to places elsewhere for recycling if possible or proper disposal.
- While the SWMP and reports should have been timely submitted, they were submitted, and the Permittee is not aware of anyone being damaged due to the SWMP and various reports being late. Further the Permittee did not profit from the plan and reports not being timely submitted.
- While Permittee does not at this time have authorization to promulgate an ordinance concerning stormwater, the Permittee does have subdivision regulations and junkyard regulations which have limited provisions that are utilized to provide for the proper handling of certain stormwater run-off. According to the Permittee's environmental enforcement officer junkyards have to get a discharge permit from ADEM before getting a local permit for a junk yard. The Permittee also enforces local provisions of the Code of Alabama concerning public nuisances, including but not limited to abandoned wells and cisterns. §§ 45-8-172, et seq., Code of Alabama 1975, as amended.

- Further the Permittee utilizes Court ordered community service workers to pick up trash along roadways.\*

- Also the Permittee for a second year is seeking a grant to provide for the removal of uninhabitable houses and certain other undesirable structures as part of an effort to address slums and blight.\*

(\* While it is recognized the parts may not be considered as helping to preserve stormwater purity, it is noted that removal and proper disposal of trash in ditches and other drainage structures allows ditches and other parts of the drainage system to not be clogged-up with trash and debris such that they do not properly function.)

B. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the penalty assessed herein.

#### **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., as amended, including previous penalty amounts assessed for similar violations, 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 the violations alleged 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 \$14,500 for the violations stated herein, not later than forty-five days from the effective date of this 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 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. Not later than ninety days after the effective date of this Order, the Permittee agrees to prepare and submit to the Department a revised SWMP that includes a schedule for implementation (i.e., Compliance Plan) that identifies the program changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number ALR040004. If the Department determines through its review of the submitted Plan that the proposed changes are not sufficient to accomplish compliance with the NPDES Permit, then the Permittee agrees to modify the Plan so that it does accomplish compliance. The Permittee agrees to submit modifications to the Plan, if required, to the Department no later than sixty days after receipt of the Department's comments.

D. The Permittee agrees to implement all modifications outlined in the Plan, including any modification identified by the Department, not later than 180 days after the effective date of this Order.

E. The Permittee agrees to submit a certification to the Department, indicating whether or not the Permittee is in compliance with all requirements of this Order. The Permittee agrees to submit said certification to the Department not later than 180 days after the effective date of this Order.

F. The Department and the Permittee (hereinafter "Parties") agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

G. 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.

H. 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.

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

J. 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 that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that 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.

K. The Parties 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 that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by 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 future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

L. The Parties 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.

M. The Parties agree that final approval and issuance of this Consent 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 proposed Consent Order.

N. The Parties 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.

O. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

P. The Parties 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.

**Calhoun County, Alabama**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

By: Rudy Abbott

By: Marilyn Elliott

Its: Chairman of the Calhoun  
County Commission

Its: Deputy Director

Date: 9-12-2013

Date: 10/29/2013

Attachment A

Civil Penalty Synopsis

Calhoun County  
NPDES Permit No. ALR040004  
Calhoun County, Alabama

| <b>Violation*</b>                                      | <b>Number of Violations*</b> | <b>Seriousness of Violation &amp; Base Penalty*</b> | <b>Standard of Care*</b> | <b>History of Previous Violations*</b> |
|--|------------------------------|---|--------------------------|--|
| Failure to maintain and submit an adequate SWMP Plan   | 1                            | \$6,250   | \$5,000                  | \$2,500                                |
| Failure to submit an adequate and timely Annual Report | 2                            | \$2,000   | \$1,000                  | \$1,000                                |
| Total  | 3                            | \$8,250   | \$6,000                  | \$3,500                                |

**Economic Benefit:** \_\_\_\_\_  
**Mitigating Factors:** \_\_\_\_\_ (3,250)  
**Ability to Pay:** \_\_\_\_\_  
**Other Factors:** \_\_\_\_\_  
  
**Civil Penalty:**           **\$14,500**          

Footnote

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

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Calhoun County

Municipal Separate Storm Sewer System (MS4)  
NPDES Permit No. ALR040004  
Calhoun County, Alabama

CONSENT ORDER NO. 14-007-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Calhoun County (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl. Vol.), the Alabama Water Pollution Control Act, §§ 22-22-1 to 22-22-14, Ala. Code (2006 Rpl. Vol.), and the ADEM Administrative Code of Regulations (ADEM Admin. Code r.) promulgated pursuant thereto.

***FINDINGS***

A. The Permittee operates a municipal separate storm sewer system (hereinafter "MS4") located in Calhoun County, Alabama.

B. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

C. 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 through 22-22-14 (2006 Rplc. Vol.).



D. On January 31, 2011, the Department issued to the Permittee a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit ALR040004 (hereinafter "the Permit"), which established limits on the discharge of pollutants from the MS4 to waters of the State. The Permit was modified on February 24, 2012. The Permit expires January 31, 2016.

E. Part II.A.4 of the Permit required the operator to submit a storm water management program (SWMP) plan to the Department within six months of coverage under the Permit. The SWMP plan was due to the Department on or about August 1, 2011.

F. Part III of the Permit states the requirements for SWMP plans.

G. On February 16, 2012, the Department issued the Permittee a Notice of Violation (NOV) for non-submittal of the SWMP plan as required under Part II.A.4 of the Permit. In the NOV, the Permittee was required to submit the SWMP plan within thirty days of receipt of the NOV.

H. On June 15, 2012, the Department received the SWMP from the Permittee.

I. Part V.C.1 of the permit requires the Permittee to submit an annual report (hereinafter "Annual Report") to the Department no later than March 31<sup>st</sup> of each year.

J. On April 16, 2012, the Department received the 2011-2012 Annual Report from the Permittee.

K. The Department issued the Permittee a NOV for non-submittal of the 2012-2013 Annual Report on April 18, 2013. The Department received the 2012-2013 Annual report on April 24, 2013 from the Permittee.

#### **DEPARTMENT'S CONTENTIONS**

L. On July 10, 2012, the Department conducted an audit of the Permittee's MS4. During this audit, Department personnel informed the Permittee that the submitted SWMP plan that outlines best management practices (BMPs) that the Permittee implements for each of the six minimum control measures was inadequate and that the 2011-2012 Annual Report was insufficient in detailing the status of the Permittee's compliance with the permit conditions, the measurable goals for the six minimum control measures, summary of stormwater activities the County plans to undertake within the upcoming permitting year. During the audit, Department personnel determined that the Permittee had not implemented any of the BMPs as outlined in the SWMP plan.

M. In a letter dated October 10, 2012, the Department informed the Permittee of the findings of the July 10, 2012 audit. In this letter, the Department directed the Permittee to submit a SWMP plan meeting all the Permit requirements to the Department by March 31, 2013. The Department provided the Permittee with a SWMP plan template that would ensure that all minimum control measures, along with sufficient level of detail of each measure, were included in the SWMP. The Department has not received a revised SWMP plan.

N. In May 2013, the Department conducted a review of the submitted 2012-2013 Annual Report for the Permittee's MS4. Based on the review of the aforementioned document, along with the July 2012 audit, the Department determined that the County is deficient with the permit requirements as specified below:

1. Part III.B.1 details the requirements for the Public Education and Outreach Control Measure. The SWMP did not meet the requirements of condition Part III.B.1, as follows:
  - a. How the Permittee plans to inform individuals and households about the steps they can take to reduce storm water pollution.
  - b. The distribution of educational materials to the community and outreach activities about the impacts of discharges on water bodies and the steps that the public can take to reduce pollutants in storm runoff to the maximum extent practicable is inadequate.
  - c. The Permittee does not specify how it plans to inform individuals and groups on how to become involved in the storm water program.
  - d. The Permittee does not specify who the target audiences for the education program who are likely to have significant water impacts and why those target audiences were selected.
  - e. The Permittee does not specify the target pollutant sources the public education program is designed to address.
  - f. The Permittee does not specify how this minimum control measure will be evaluated for success.
2. Part III.B.2 details the requirements for the Public Involvement/Participation Measure. The SWMP did not meet the requirements of condition Part III.B.2, as follows:

- a. The Implementation of a process to facilitate opportunities for direct action, education, and volunteer programs is inadequate.
  - b. The Permittee does not specify how the public is involved in the development and submittal of the storm water management program.
  - c. The Permittee does not specify its plan to actively involve the public in the development and implementation of the program.
  - d. The Permittee does not specify the targeted audiences for the public involvement program.
  - e. The Permittee does not specify how this minimum control measure will be evaluated for success.
3. Part III.B.3 details the requirements for the Illicit Discharge Detection and Elimination (IDDE) Control Measure. The SWMP did not meet the requirements of condition Part III.B.3, as follows:
- a. The Permittee does not implement an ongoing program to detect and eliminate illicit discharges into the Permittee's small MS4, and improper disposal, including spills not under the purview of another responding authority, into the MS4 owned or operated by the Permittee, to the MEP.
  - b. The Permittee's existing storm sewer map has not been updated on an annual basis and shall include the following: location of all outfalls and the names and location of all waters of the State that receive discharges from those outfalls; structural BMPs owned, operated, and maintained by boundaries of the Permittee's watershed.
  - c. The Permittee has not to the extent allowable under State and local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system that are not listed in Part I.B. of the permit, and implement appropriate enforcement procedures and actions. The ordinance or other regulatory mechanism shall include escalating enforcement procedures and actions.
  - d. The Permittee does not implement a program to review and update the IDDE ordinance to prohibit and eliminate illegal discharges and/or dumping into the MS4. The ordinance or other regulatory mechanism shall be reviewed on an annual basis.

- e. The Permittee does not adequately inform the public employees, businesses and the general public of hazards associated with illegal discharges and improper disposal of waste.
  - f. The Permittee does not specify the plan to detect and address illicit discharges to the MS4, including discharges from illegal dumping and spills. This plan is to include, at a minimum:
    - i. Procedures for locating priority areas
    - ii. Procedures for tracing the source of an illicit discharge
    - iii. Procedures for removing the source of the illicit discharge
    - iv. Procedures for program evaluation and assessment
  - g. The Permittee does not specify how this minimum control measure will be evaluated for success.
4. Part III.B.4 details the requirements for the Construction Site Storm Water Runoff Control Measure. According to Part III.B.4., the Permittee had 730 days from issuance of the Permit (approximately February 1, 2013) to comply with this Part of the Permit. The SWMP did not meet the requirements of condition Part III.B.4, as follows:
- a. The Permittee did not implement within 730 days from the effective date of the Permit an ordinance or other regulatory mechanism to require erosion and sediment controls, sanctions to ensure compliance, and to provide all other authorities needed to implement the requirements of Part III.B.4 of the Permit.
  - b. The Permittee does not specify the procedures for the periodic inspection of qualifying construction sites to verify the use of appropriate erosion and sediment control practices.
  - c. The Permittee does not specify the frequency and prioritization of inspection activities.
  - d. The Permittee does not specify the specific procedures for construction site plan (including erosion prevention and sediment controls) review and approval: The MS4 procedures must include an evaluation of plan completeness and overall BMP effectiveness.
  - e. The Permittee does not specify the procedures to notify ADEM of non-compliant construction sites discovered during periodic inspections.

- f. The Permittee does not specify procedures for receipt and consideration of information submitted by the public.
  - g. The Permittee does not specify how this minimum control measure will be evaluated for success.
- 5. Part III.B.5 details the requirements for the Post-Construction Storm Water Management in New Development and Redevelopment Control Measure. According to Part III.B.5., the Permittee had 730 days from issuance of the Permit (approximately February 1, 2013) to comply with this Part of the Permit. The SWMP did not meet the requirements of condition Part III.B.5, as follows:
  - a. The Permittee did not implement within 730 days from the effective date of the Permit project review, approval, and enforcement procedures for qualifying new development and redevelopment projects.
  - b. The Permittee did not implement an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects.
  - c. The Permittee does not specify the procedures for development site plan review and approval to ensure post-construction BMPs are addressed.
  - d. The Permittee's implementation of adequate long-term operation and maintenance of BMPs is inadequate.
    - i. The Permittee does not specify corrective actions, to include follow-up inspections, to current maintenance of BMPs.
  - e. The Permittee does not specify the procedures to review and evaluate policies and ordinances related to building codes, or other local regulations, with a goal of identifying regulatory and policy impediments to the installation of green infrastructure and low-impact development techniques.
  - f. The Permittee does not specify how this minimum control measure will be evaluated for success.
- 6. Part III.B.6 details the requirements for the Pollution Prevention/Good Housekeeping for Municipal Operations Control Measure. The SWMP did not meet the requirements of condition Part III.B.6, as follows:

- a. The Permittee does not specify the municipal operations and industrial activities within its MS4 that are impacted by this minimum control measure.
- b. The Permittee does not specify the maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to its MS4.
- c. The Permittee does not specify detailed controls for reducing or eliminating the discharge from roadways, municipal parking lots, maintenance and storage yards, and fleet and maintenance shops with outdoor storage areas.
- d. The Permittee does not specify the procedures for the proper disposal of waste removed from the MS4 and municipal operations, including materials such as dredge spoil, accumulated sediments, floatables, and other debris.
- e. The Permittee does not specify how this minimum control measure will be evaluated for success.

7. Part V.C.1 details the requirements for the Reporting. The Annual Report did not meet the requirements of condition Part V.C.1, as follows:

- a. The Permittee does not specify the status of compliance with permit conditions, an assessment of the appropriateness of the identified BMPs, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measureable goals for each of the minimum control measures.
- b. The Permittee does not analyze the monitoring data to assess the success of the program at reducing the discharge of pollutants to the MEP.
- c. The Permittee does not specify a summary of the storm water activities planned for the next reporting cycle, to include an implementation schedule.
- d. The Permittee does not specify proposed changes to the SWMP, including changes to any BMPs or any identified measureable goals that apply to the program elements.
- e. The Permittee does not specify if it was relying on another government entity to satisfy some of your permit obligations.

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 the Permittee; the economic benefit that delayed compliance may have conferred 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 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, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** The Department noted numerous violations of the Permit. The Department considered the general nature of the violations and any available evidence of irreparable harm to the environment or threat to public.

B. **THE STANDARD OF CARE:** By committing the violations alleged herein, the Permittee did not exhibit a standard of care commensurate with the applicable program requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Based on the information available to the Department, the Department has not been able to ascertain whether the violation noted herein conferred a significant economic benefit upon the Permittee.

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:** In 2011, 2012 and 2013, the Permittee failed to submit to the Department the Annual Report in a timely manner. The Permittee failed to submit to the Department an adequate SWMP plan in a timely manner.

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 Consent Order is a negotiated settlement between the Department and the Permittee. Therefore, in the spirit of cooperation and the desire to resolve this matter

amicably and without incurring the unwarranted expense of litigation, the Department has determined the amount of the penalty it believes is warranted in this matter (see Attachment A).

H. The Department neither admits nor denies the Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ***PERMITTEE'S CONTENTIONS***

A. Permittee desires to in a spirit of intergovernmental cooperation settle this matter. Lest it seem however that the Permittee has done nothing concerning certain potential stormwater problems and documents the following is noted:

- In the vicinity of the Permittee's construction landfill there has for a number of years been provision for oil, paint and batteries to be left for them to be taken to places elsewhere for recycling if possible or proper disposal.
- While the SWMP and reports should have been timely submitted, they were submitted, and the Permittee is not aware of anyone being damaged due to the SWMP and various reports being late. Further the Permittee did not profit from the plan and reports not being timely submitted.
- While Permittee does not at this time have authorization to promulgate an ordinance concerning stormwater, the Permittee does have subdivision regulations and junkyard regulations which have limited provisions that are utilized to provide for the proper handling of certain stormwater run-off. According to the Permittee's environmental enforcement officer junkyards have to get a discharge permit from ADEM before getting a local permit for a junk yard. The Permittee also enforces local provisions of the Code of Alabama concerning public nuisances, including but not limited to abandoned wells and cisterns. §§ 45-8-172, et seq., Code of Alabama 1975, as amended.



- Further the Permittee utilizes Court ordered community service workers to pick up trash along roadways.\*

- Also the Permittee for a second year is seeking a grant to provide for the removal of uninhabitable houses and certain other undesirable structures as part of an effort to address slums and blight.\*

(\* While it is recognized the parts may not be considered as helping to preserve stormwater purity, it is noted that removal and proper disposal of trash in ditches and other drainage structures allows ditches and other parts of the drainage system to not be clogged-up with trash and debris such that they do not properly function.)

B. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the penalty assessed herein.

### **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., as amended, including previous penalty amounts assessed for similar violations, 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 the violations alleged 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 \$14,500 for the violations stated herein, not later than forty-five days from the effective date of this 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 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. Not later than ninety days after the effective date of this Order, the Permittee agrees to prepare and submit to the Department a revised SWMP that includes a schedule for implementation (i.e., Compliance Plan) that identifies the program changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number ALR040004. If the Department determines through its review of the submitted Plan that the proposed changes are not sufficient to accomplish compliance with the NPDES Permit, then the Permittee agrees to modify the Plan so that it does accomplish compliance. The Permittee agrees to submit modifications to the Plan, if required, to the Department no later than sixty days after receipt of the Department's comments.

D. The Permittee agrees to implement all modifications outlined in the Plan, including any modification identified by the Department, not later than 180 days after the effective date of this Order.

E. The Permittee agrees to submit a certification to the Department, indicating whether or not the Permittee is in compliance with all requirements of this Order. The Permittee agrees to submit said certification to the Department not later than 180 days after the effective date of this Order.

F. The Department and the Permittee (hereinafter "Parties") agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

G. 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.

H. 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.

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

J. 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 that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that 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.

K. The Parties 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 that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by 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 future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

L. The Parties 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.

M. The Parties agree that final approval and issuance of this Consent 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 proposed Consent Order.

N. The Parties 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.


O. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

P. The Parties 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.

**Calhoun County, Alabama**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

By: 

By: 

Its: Chairman of the Calhoun  
County Commission

Its: Deputy Director

Date: 9-12-2013

Date: 10/29/2013

Attachment A  
Civil Penalty Synopsis

Calhoun County  
NPDES Permit No. ALR040004  
Calhoun County, Alabama

| Violation*   | Number of Violations* | Seriousness of Violation & Base Penalty* | Standard of Care* | History of Previous Violations* |
|--|-----------------------|--|-------------------|---------------------------------|
| Failure to maintain and submit an adequate SWMP Plan   | 1                     | \$6,250                                  | \$5,000           | \$2,500                         |
| Failure to submit an adequate and timely Annual Report | 2                     | \$2,000                                  | \$1,000           | \$1,000                         |
| Total  | 3                     | \$8,250                                  | \$6,000           | \$3,500                         |

|                            |                 |
|----------------------------|-----------------|
| <b>Economic Benefit:</b>   | _____           |
| <b>Mitigating Factors:</b> | _____ (3,250)   |
| <b>Ability to Pay:</b>     | _____           |
| <b>Other Factors:</b>      | _____           |
| <b>Civil Penalty:</b>      | <b>\$14,500</b> |

Footnote

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