

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

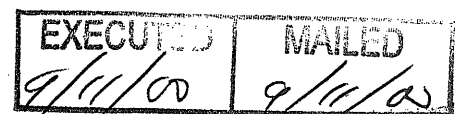
IN THE MATTER OF)
)
CHOCTAW COUNTY BOARD OF EDUCATION)
CHOCTAW COUNTY FOOTBALL STADIUM)
)
BUTLER, ALABAMA)
NPDES PERMIT NUMBER ALG610000)
AUTHORIZATION ALR104973)

ORDER NO. 00-200-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, the Alabama Water Pollution Control Act, Code of Alabama (1975), §§22-22-1 through 22-22-14, as amended, and §307 of the Federal Water Pollution Control Act, 33 U.S.C. §1317, and with the consent of Choctaw County Board of Education, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Choctaw County Board of Education (hereinafter the "Permittee") operates a construction site consisting of a football stadium and a school in Choctaw County, Alabama located at T 10N, R 3W, Section 18 (hereinafter the "Site").
2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.
3. The Alabama Department of Environmental Management Administrative Code R. 335-6-6-.03(b) states, in the pertinent part, that no person, required to apply for a storm water discharge permit by 40 CFR 122.26 (1994), shall discharge pollutants into waters of the state



without first having obtained a valid NPDES Permit or coverage under a valid General NPDES Permit. New dischargers shall obtain a valid NPDES Permit or coverage under a valid General NPDES Permit prior to conducting any activity for which application for a storm water discharge permit is required by 40 CFR 122.26 (1994).

4. On October 20, 1999, Department personnel inspected the Site. The inspection revealed that the Permittee had failed to obtain an NPDES permit to discharge stormwater from the construction site and failed to implement adequate Best Management Practices ("BMPs") for the control of erosion and sediment loss. A "P" form warning was provided on site.

5. On October 27, 1999, the Department received a response, on behalf of the Permittee, from H. Kenneth White & Associates which addressed the lack of BMP's and indicated that a permit application was forthcoming. The Department determined the response to be adequate.

6. The Alabama Department of Environmental Management Administrative Code R. 335-6-10-.09(1)(e) 9 states that there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric Turbidity Units, (n.t.u.), above background.

7. Having not received an application for permit, on November 2, 1999, the Department sent a Notice of Violation ("NOV") to the Permittee for failure to obtain an NPDES permit, failure to implement effective BMP's, and violation of State Water Quality Standards for increasing turbidity in Big Branch by 5792 n.t.u., above background. The NOV required submission of a written response including a BMP plan detailing the corrective actions taken to

correct site deficiencies and a remediation plan addressing the clean up of sediment deposited offsite. No response was received.

8. On or about January 21, 2000, the Department received an application for a General NPDES Stormwater Discharge Permit from the Choctaw County Board of Education. The Department issued authorization number ALR104973, under NPDES General Permit Number ALG610000 (hereinafter "NPDES Permit") on February 4, 2000. The NPDES Permit expires on July 31, 2002.

9. Part I, D, 4, a, of the NPDES Permit requires the Permittee to furnish to the Department, within a reasonable time, any information which the Director of his designee may request to determine compliance with the NPDES permit.

10. On February 16, 2000, the Department sent a Request For Documents to the Permittee requesting submission of a BMP plan for the above referenced site and a remediation plan addressing the clean up of sediment deposited offsite. No response was received.

11. On April 5, 2000, the Department sent the Permittee a NOV for failure to respond. The NOV also required the Permittee to submit a written response including a BMP plan for the Site, a remediation plan addressing the clean up of sediment deposited offsite, and a compliance schedule. A response was received on April 19, 2000. However, the response did not address remediation of off site sediment, nor did it include a compliance schedule as required by the NOV. Following telephone conversations with Department staff, additional information was received on April 21, 2000, and May 8, 2000. The Department determined the responses to be inadequate because they did not include a compliance schedule as required by the NOV.

12. Part II, B, 2, a, b of the NPDES Permit requires the Permittee to prepare and implement a BMP plan prepared and certified by a qualified credentialed professional describing practices which will be implemented and maintained to prevent/minimize the discharge of all sources of pollution to State waters in stormwater runoff.

13. Part II, C, 3, of the NPDES Permit requires the Permittee to clearly display, prior to commencement of any regulated activity, until authorization is terminated by the Department, the name of the permittee, "ADEM NPDES ALR" followed by the six digit NPDES authorization number facility/project name and other information.

14. On July 11, 2000, the Department conducted an inspection of the Site which revealed that the Permittee had failed to implement and maintain adequate BMP's for the protection of water quality and failed to display the permit authorization number. Although the Permittee developed a BMP plan, it was improperly and incompletely implemented resulting in discharges of pollutants to waters of the State.

15. Although the Permittee does not agree with certain Findings presented in this Consent Order, it does agree, in the spirit of cooperation and with the desire to amicably resolve this matter with the Department, not to contest this Order. In view of the aforementioned and its desire to comply with the provisions of the Alabama Water Pollution Control Act and the Federal Water Pollution Control Act and their implementing regulations, the Permittee also agrees to all the terms of this Consent Order.

16. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. 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(18), and 22-22-9(k) , as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That immediately upon receipt of this Order, and continuing each and every day thereafter, the Permittee shall comply with the NPDES stormwater discharge permit including the existing Best Management Practices ("BMP") plan.

B. That within fourteen (14) days of the effective date of this Order, the Permittee shall implement and complete the remediation plan dated April 19, 2000 and modified April 21, 2000, for the removal of sediment from Big Branch. The Permittee shall modify the remediation plan within three (3) days of receipt of any comments from the Department during the life of the remediation project.

Within three (3) days of completion of the remediation project, the Permittee shall submit a certificate of completion to the Department by the preparer of the remediation plan.

C. 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 on behalf of the party represented and to legally bind such party.

D. 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 Order.

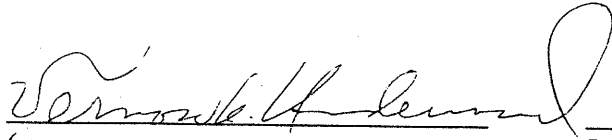
E. That the Permittee is not relieved from any liability if it fails to comply with any provision of the Consent Order.

F. That for purposes of this 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 Order, the Permittee shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility.

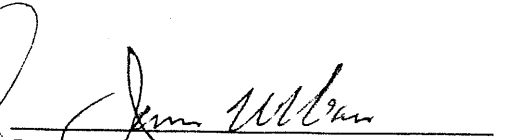
G. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. This Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the Permittee, which would constitute possible violations not addressed in this Order, then such future violations shall be addressed in Orders or 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.

H. That by agreement of the parties, this 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.

ORDERED and ISSUED this 11th day of September, 2000.


(Signature)

Vernon A. Underwood
(Please Print Name and Title of Authorized Officer)


James W. Warr, Director
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Choctaw County Board of Education