

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

June 5, 2007

CERTIFIED MAIL

7004 1160 0006 6052 1122

SMITTY THORNE

ALABAMA STATE PORT AUTHORITY

PO BOX 1588

MOBILE AL 36633



Facsimiles: (334)

Administration: 271-7950
General Counsel: 394-4332
Communication: 394-4383
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

RE: CONSENT ORDER 07-122-CMNPS

Bulk Material Handling Plant

McDuffie Island Coal Terminal

NPDES AL0047651

NPDES AL0042374

Mobile County

Mobile County

Dear Mr. Thorne:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact Shelane P. Bergquist, Mining Unit, Mining & Nonpoint Source Section, by email at sbergquist@adem.state.al.us or by phone at (334) 394-4324.

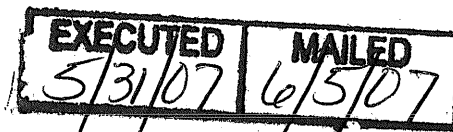
Sincerely,

Steven G. Jenkins, Chief
Field Operations Division

soj/spb File:ECO/680 & 677

c: Water Management Division, EPA Region IV
Office of Public Affairs, ADEM

Enclosure: Signed Original Consent Order



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



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ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

ALABAMA STATE PORT AUTHORITY)

BULK MATERIAL HANDLING PLANT)

MOBILE, T4S, R1W, S2)

MOBILE COUNTY, ALABAMA)

NPDES AL0047651)

MCDUFFIE ISLAND COAL TERMINAL)

MOBILE, T4S, R1W, S25, 35 & 36)

MOBILE COUNTY, ALABAMA)

NPDES AL0042374)

CONSENT ORDER 07-122-CMNPS

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Alabama State Port Authority (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), 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, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Operator is a State governmental agency which operates material transloading facilities at the Bulk Material Handling Plant and McDuffie Island Coal Terminal (hereinafter "Facilities"). The Facilities are located in Mobile, Mobile County, Alabama. Sediment, coal, and other pollutants in stormwater runoff from the Facilities

have the potential to discharge and/or have discharged to Three Mile Creek, classified for Agricultural & Industrial Water Supply, and to Mobile Bay, classified for Fish & Wildlife, both waters of the State.

2. The following acronyms are used in this Consent Order and, when used, shall have the meaning of the name or title referenced below.

BMHP	Bulk Material Handling Plant
BMPs	Best Management Practices
DMR	Discharge Monitoring Report
Fe	Iron
MICT	McDuffie Island Coal Terminal
Mn	Manganese
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PAP	Pollution Abatement and/or Prevention Plan
PE	Professional Engineer licensed to practice in the State of Alabama
SEP	Supplemental Environmental Project
TSS	Total Suspended Solids

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

4. On September 11, 2002, the Operator was reissued NPDES permit coverage AL0047651 by the Department for discharges of treated effluent from the BMHP to waters of the State. The permit is scheduled to expire on August 31, 2007.

5. On February 28, 2003, the Operator was reissued NPDES permit coverage AL0042374 by the Department for discharges of treated effluent from the MICT to waters of the State. The permit is scheduled to expire on February 28, 2008.

6. Part II, B., 1., a. of the Facilities' NPDES permits AL0047651 and AL0042374 (hereinafter "Permits") requires the Operator to comply with all terms and conditions of the Permits.

7. Since January 2003, the Operator has reported a total of thirty-nine (39) separate effluent limit violations of the Permits. The Operator was issued NOVs on March 31, 2005; July 22, 2005; and November 14, 2005. Responses which addressed noted deficiencies in each of the NOVs were received from the Operator.

8. During an inspection of the BMHP on February 17, 2005, the Department documented that the Operator had not properly implemented and maintained effective BMPs. The Operator was issued an NOV April 26, 2005, based on the results of the inspection.

9. During an inspection of the MICT on February 17, 2005, the Department documented that the Operator had not properly implemented and maintained effective BMPs. The Operator was issued an NOV on April 26, 2005, based on the results of the inspection.

10. During an inspection of the MICT on May 3, 2006, the Department documented that the Operator had not properly implemented and maintained effective BMPs.

11. During an inspection of the BMHP on July 20, 2006, the Department documented that the Operator had not properly implemented and maintained effective BMPs.

12. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

13. 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 State resources in further prosecuting the above 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

14. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, 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 confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day 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: During the time period described in the Stipulations of this Consent Order, the Operator did not ensure that effective BMPs were fully implemented and maintained resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. While the noted violations caused harm, the noted violations did not appear to cause irreparable harm to the environment. There is no evidence that the noted violations were a threat to the health or safety of the public. The Operator has advised the Department that the Operator has since implemented and is maintaining effective BMPs at the Facilities.

B. THE STANDARD OF CARE: During the time period described in the Stipulations of this Consent Order, the Operator did not implement and fully maintain effective BMPs at the Facilities commensurate with applicable regulatory requirements. Upon notification by the Department, the Operator has advised the Department that the Operator is implementing and maintaining effective BMPs at the Facilities.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator continued to monitor the Operator's discharges and report the results. The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements and delayed response to the noted violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Operator did not take timely action to address noted deficiencies until required to do so by the Department. Upon notification by the

Department, the Operator has advised the Department that the Operator has completed remediation of known deficiencies at the Facilities. There are no known permanent environmental effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of previous violations as described in the Stipulations.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation. The Operator has advised the Department, that in this same spirit of cooperation, the Operator has implemented changes and modifications to BMPs, operational processes and protocols to ensure compliance with applicable rules and regulations, and is committed to implementing additional modifications as needed to further enhance the Facilities' ability to ensure future compliance.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for

timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$25,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent 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 Operator may elect to submit a plan to the Department to implement a SEP. If the Operator elects to implement this SEP, the Operator agrees to submit to the Department for review and acceptance, no later than thirty days after the effective date of this Consent Order, unless extended in writing by the Department, a letter proposing the SEP, as well as an implementation plan and schedule not to exceed 180 days after the effective date of this Consent Order, which must be accepted by the Department to be acceptable as a SEP which offsets the penalty assessed above. This SEP may, at the sole discretion of the Department, offset a portion of the penalty at a ratio of One Dollar of penalty for every Three Dollars spent on the SEP, but in no event shall the penalty be offset below \$5,000. Adequate documentation of all such expenses shall be submitted to the Department for review and concurrence in determining the amount of the penalty offset no later than thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Should the Operator not offset

the total amount of the penalty to the extent allowed above, the Operator agrees that the remaining amount of the penalty shall be due and payable within thirty days of the Department's notifying the Operator of the amount of penalty due to be paid. If the SEP is not acceptable to the Department, the total amount of the penalty shall be due within thirty days of the Operator's receipt of the Department's notification that the SEP is not acceptable. Furthermore, in the event the SEP is not fully implemented within the timeframe accepted by the Department, the total amount of the penalty shall be due within thirty days of the Operator's receipt of the Department's notification that the SEP is not acceptable.

C. The Operator agrees that 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
PO Box 301463
Montgomery, Alabama 36130-1463

D. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to ensure future compliance with the AWPCA, applicable ADEM regulations, and all NPDES permit limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order or any other Order executed or issued by the Department.

E. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable noncompliant and/or unpermitted discharges of pollutants to waters of the State.

F. The Operator agrees, unless relieved of this requirement in writing by the Department, that:

1. all inspections/evaluations pursuant to this Consent Order, shall be performed by a PE;
2. BMP implementation and maintenance, and other corrective/remediation activities pursuant to this Consent Order, shall be certified by a PE, and shall be performed by or under the direct supervision of a trained, qualified professional;
3. all applications, plans, and information submitted pursuant to this Consent Order shall be certified by a PE;
4. all submittals to the Department pursuant to this Consent Order shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a PE; and
5. all applications, plans, reports, and other submittals to the Department pursuant to this Consent Order shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her PE, how the inspection/work was conducted, and the results of the inspection/work.

The Operator agrees, within fifteen days of the receipt of any written comments from the Department, to modify any application, plan, information, report, or other submittal, or submit additional information/clarification to the Department to address any comments made by the Department in writing.

G. The Operator agrees, within twenty days after the effective date of this Consent Order, to conduct comprehensive inspections of the Facilities which address all NPDES regulatory requirements, offsite conveyances, and affected State waters.

H. The Operator agrees, within forty-five days after the effective date of this Consent Order, to submit to the Department plans, including a schedule to accomplish corrective actions and/or improvements identified by the comprehensive inspections of the Facilities, and to ensure full compliance with the requirements of ADEM Admin. Code ch. 335-6-6, Admin. Code ch. 335-6-9, and the Permits.

I. The Operator agrees, within thirty days after the effective date of this Consent Order, to submit to the Department a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facilities deposited offsite and in State waters.

J. The Operator agrees, within ninety days after the effective date of this Consent Order, to fully implement corrective actions and/or improvements identified by the comprehensive inspections of the Facilities that do not require modification of the Permits to ensure compliance with ADEM NPDES rules.

K. The Operator agrees, within ninety-five days after the effective date of this Consent Order, to submit to the Department certification that all deficiencies identified

by the comprehensive inspections have been corrected, and full compliance with the requirements of the NPDES rules and Permits has been achieved, except for any corrective actions that must be authorized by modification of the Permits.

L. That, if a modification to the Permits is determined to be necessary to implement corrective actions to ensure compliance with the NPDES rules and Permits, the Operator shall submit a complete and correct application for major modification of the Permits, including the appropriate fee, no later than thirty-five days after the effective date of this Consent Order.

M. 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.

N. 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.

O. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

P. For purposes of this Consent Order only, the Operator 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 Operator

also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator 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 Operator, including the Operator's 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 Operator) 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 Operator, 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 the Department is not obligated to do so.

Q. The Department and the Operator 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 Facilities which would constitute possible violations not addressed in this Consent Order, then such future violations may 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 Operator 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.

R. The Department and the Operator 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 Operator does hereby waive any hearing on the terms and conditions of same.

S. The Department and the Operator agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

T. The Department and the Operator agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

U. The Department and the Operator agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental

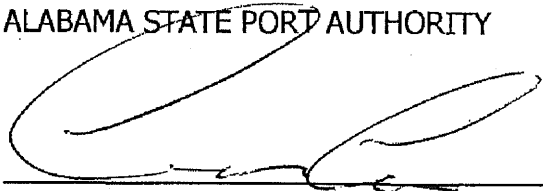
Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

V. The Department and the Operator agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

W. The Department and the Operator 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 Operator of the Operator's obligations to comply in the future with any permit coverage.

Executed in duplicate with each part being an original.

ALABAMA STATE PORT AUTHORITY



(Signature of Authorized Representative)

James R. Lyons

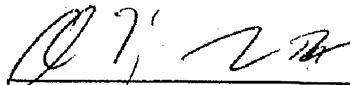
(Print Name of Authorized Representative)

Director

Title

Date Signed: 3-8-07

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT.



Onis "Trey" Glenn, III
Director

Date Signed: 5/31/07