



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

NOV 17 2015

CERTIFIED MAIL #91 7108 2133 3936 7148 1159

Honorable Gary Fuller
Mayor, City of Opelika
Post Office Box 390
Opelika, Alabama 36803-0390

Subject: Response to Comment and **Final Administrative Order No. 16-017-WP**
City of Opelika Municipal Separate Storm Sewer System (MS4)
NPDES Permit ALR040018
Lee County (81)

Dear Mayor Fuller:

In your letter submitted to the Department on October 12, 2015, regarding the proposed administrative order, you stated that the penalty of \$14,500 was excessive and unwarranted. You also requested that the Department reduce the amount of the fine levied against the City of Opelika. Please be aware that the penalty amount included in the proposed administrative order, public noticed on October 2, 2015, was \$13,000, not \$14,500 as stated in your letter. In determining this civil penalty amount, the Department took into account the information included in the City of Opelika's letter, dated September 18, 2015, and the required factors outlined in Ala. Code §22-22A-5(18)c. Based on the information available to the Department, which is outlined in the administrative order, the Department believes that the penalty of \$13,000 is appropriate.

As such, please find enclosed the ADEM Administrative Order No. 16-017-WP which requires the City of Opelika to take certain actions in regard to the alleged violations of the NPDES Permit ALR040018, ADEM Admin. Code div. 335-6, and the Alabama Water Pollution Control Act. Please note that the civil penalty in the amount of \$13,000 is due no later than forty-five days after receipt of this order.

If you have questions regarding this matter, please contact Marla S. Smith by email at mssmith@adem.state.al.us or by phone at (334) 270-5616.

Sincerely,

A handwritten signature in black ink that reads "Glenda L. Dean".

Glenda L. Dean, Chief
Water Division

GLD/mss

File: EUO/9248

Enclosure

Cc: Thomas L. Johnston, Office of General Counsel
Valerie Jackson, Office of General Counsel
Jeffery W. Kitchens, Water Division
Marla Smith, Water Division



CERTIFICATE OF SERVICE

I, Glenda L. Dean, do hereby certify that I have served the Administrative Order Number 16-017-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt #91 7108 2133 3936 7148 1159, with instructions to forward and return receipt to:

Honorable Gary Fuller
Mayor, City of Opelika
Post Office Box 390
Opelika, Alabama 36803-0390

Done this 17th day of November, 2015

Glenda L. Dean

Glenda L. Dean, Chief
Water Division
Alabama Department of Environmental Management

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

City of Opelika)

Municipal Separate Storm Sewer System (MS4))
NPDES Permit No. ALR040018)
Opelika, Lee County, Alabama)

ORDER NO. 16-017-WP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. 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 (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter "Department") makes the following FINDINGS:

1. The City of Opelika (hereinafter "Permittee") operates a municipal separate storm sewer system (hereinafter "MS4") located in Opelika, Lee County, Alabama. The Permittee's MS4 discharges to Pepperell Branch, Moores Mill Creek, and unnamed tributaries (hereinafter "UT") to Pepperell Branch and Moores Mill Creek, all Waters of the State.
2. 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.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 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.).

4. On January 31, 2011, the Department issued to the Permittee National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit ALR040018 (hereinafter "the Permit"), which establishes 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.
5. Part IV.D. and V.A. of the Permit require the Storm Water Management Program (hereinafter "SWMP") plan to include a monitoring component for discharges to impaired waters. The Permittee's SWMP plan includes a monitoring plan for Pepperell Branch and Moores Mill Creek.
6. Part V.C.1.(f) of the Permit requires that the Annual Report include all monitoring results collected during the previous year.
7. On April 25, 2014, the Department entered into Consent Order 14-058-CWP (hereinafter "CO") with the Permittee for violations of the Permit. Pursuant to Paragraphs D and E of the Order portion of the CO, the Permittee was required to monitor Pepperell Branch at the locations outlined in the Permittee's SWMP plan four times during the growing season following the effective date of the CO and then to continue the monitoring schedule for Pepperell Branch as outlined in the SWMP Plan. The CO also required the Permittee to monitor Moores Mill Creek at the locations outlined in the SWMP Plan on a monthly basis for the first six months following the effective date of the CO and then continue the monitoring schedule as outlined in the SWMP Plan.
8. On March 23, 2015, the Department received the 2014-2015 Annual Report from the Permittee. The 2014-2015 Annual Report did not include any monitoring data as required by Part V.C.1.(f) of the Permit. On May 18, 2015, the Department requested the monitoring data to be submitted to the Department. The Department received the monitoring data from the Permittee on June 2, 2015.
9. Based on its review of the 2014-2015 Annual Report and an audit performed on the Permittee by the Department on June 3, 2015, the Department determined that the Permittee violated the Permit and the CO as specified below:

- A. Part V.A. of the Permit requires the Permittee to implement monitoring requirements for discharges to impaired waterbodies and/or waterbodies with an EPA developed or approved

total maximum daily load. The Permittee did not meet the requirements of condition Part V.A. as follows:

- i. The Permittee did not implement sampling for Phosphorus in Pepperell Branch during the growing season (April-Oct 2014) as required by the CO.
- ii. As of June 3, 2015, the Permittee had not implemented sampling for Phosphorus as outlined in the SWMP Plan.
- iii. The Permittee did not implement sampling for TSS and Turbidity in Moores Mill Creek for six consecutive months (May – Oct 2014) following the effective date of the CO.
- iv. The Permittee did not sample Moores Mill Creek once per quarter for TSS and Turbidity, after October 2014, as outlined in the SWMP Plan.

B. Part V.C.1 details the requirements for the Reporting. The Permittee's latest Annual Report did not meet the requirements of condition Part V.C.1, as follows:

- i. The Permittee did not include 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 maximum extent practicable, and the measureable goals for each of the minimum control measures.

10. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit that delayed compliance may have conferred upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person'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 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 violations of the Permit and the Consent Order. 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:** The Permittee avoided the cost of the analytical tests for the parameters listed in Paragraph 9 of this order.
- D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.
- E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department is not aware of violations not otherwise addressed herein.
- F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.
- G. The civil penalty is summarized in Attachment A.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

- A. The Permittee shall pay to the Department a civil penalty in the amount of \$13,000.00 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. 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. Upon receipt of this Order, the Permittee shall immediately begin monitoring Pepperell Branch at the locations outlined in the Permittee's SWMP Plan for Phosphorus during each month of the growing season months of April-October during calendar year 2016 and then continue the monitoring schedule as outlined in the SWMP Plan. The Permittee shall also immediately begin monitoring Pepperell Branch at the locations outlined in the Permittee's SWMP Plan for E. Coli for twelve consecutive months and then continue the monitoring schedule as outlined in the SWMP Plan.
- D. Within 30 days of receipt of this Order, the Permittee shall submit to the Department a revision to the Monitoring Portion of the SWMP plan that specifies the chemical parameters to be monitored on Pepperell Branch.
- E. Upon receipt of this Order, the Permittee shall immediately begin monitoring Moores Mill Creek at the locations outlined in the Permittee's SWMP plan on a monthly basis for TSS and Turbidity for twelve consecutive months and then continue the monitoring schedule as outlined in the SWMP plan.
- F. Upon receipt of this Order, the Permittee shall institute procedures to ensure that all subsequent annual reports submitted to the Department are complete and timely, to include all monitoring data, as required by Part V.C. of the Permit.
- G. This Order does not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.
- H. Final approval and issuance of this 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 Order.
- I. Should any provision of this 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.

- J. Except as otherwise set forth herein, this 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 the Permittee's obligations to comply in the future with any permit coverage.
- K. Failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 16th day of NOVEMBER, 2015.



Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Attachment A

City of Opelika ALR040018

Violation*	Number of Violations *	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to comply with the April 24, 2014 Consent Order	1	\$ 6,500.00	\$ 3,500.00	
Failure to implement a monitoring program on discharges to impaired and/or TMDL waterbodies	1	\$ 1,000.00	\$ 500.00	\$ -----
		\$7,500.00	\$4,000.00	\$ -----
		Total (A)	Total (B)	Total (C)
Additional Adjustments due to negotiations, receive additional information, or public comment <div style="display: flex; justify-content: space-between;"> <div> Mitigating Factors (-) Economic Benefit (+) Ability to Pay (-) Other Factors (+/-) Total Adjustments (+/-) </div> <div> <div style="border: 1px solid black; width: 60px; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 40px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 40px;"></div> </div> </div>		Base Penalty Total [Total (A) + Total (B) + Total (C)]		
		Mitigating Factors (-)		
		Economic Benefit (+)		
		Ability to Pay (-)		
		Other Factors (+/-)		
		INITIAL PENALTY		
		Total Adjustments (+/-)		
		FINAL PENALTY		

Footnotes

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