

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management

adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700
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BOB RILEY
GOVERNOR

SEP - 2 2009

CERTIFIED MAIL - 91 7108 2133 3936 3707 2971
RETURN RECEIPT REQUESTED

TODD BERTRAM
THE SANCTUARY
1321 4TH AVE SW
BESSEMER AL 35022

RE: Unilateral Order
NPDES ALR16EBD2 (Expired)
The Sanctuary
Jefferson County (073)

Dear Mr. Bertram:

Please find enclosed the ADEM Unilateral Order which requires you to take certain actions at The Sanctuary in regard to alleged violations of the Alabama Water Pollution Control Act. This Unilateral Order has been issued without the consent of Burns Construction Company Inc.

Pursuant to §22-22A-7(c)(1), Code of Alabama (1975), as amended, this Order may be appealed by filing a request for a hearing within 30 days after receiving notice of this Order. The request should be addressed to the Chair of the Environmental Management Commission and must comply with the requirements of ADEM Admin. Code R. 335-2-1-.04, copies of which may be obtained by submitting a written request to the attention of Molly Tatum, ADEM-Permits and Services Division. Rule 335-2-1-.04 is also available online at the Department's website at www.adem.state.al.us/regulations/div2/div2.htm.

If you have questions regarding this matter, please contact Jennifer Klepac at (334) 394-4313.

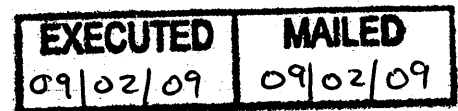
Sincerely,

James E. McIndoe, Chief
Water Division

JM/jk File: EUO/32332

Enclosures: Copy of Final Order

cc: Olivia H. Rowell, Office of General Counsel
ADEM Public Affairs Office
Cesar Zapata, US EPA Region IV
Vernon H. Crockett, ADEM
Jennifer Klepac, ADEM



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

TODD BERTRAM/RESPONSIBLE PARTY
THE SANCTUARY – BESSEMER AL
1321 4TH AVENUE SOUTH WEST
BESSEMER, T19S, R4W, S20 & 29,
JEFFERSON COUNTY, ALABAMA 35022
NPDES ALR16EBD2

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) ORDER 09- 099 -WP
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FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management [hereinafter “Department”] makes the following FINDINGS:

1. Todd Bertram, Pastor (hereinafter “Operator”), is the Responsible Party constructing the commercial site known as The Sanctuary (hereinafter the “Facility”) located in T19S, R4W, S20 & 29, on 1st Avenue SW, in Bessemer, Jefferson County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Moore Creek and Halls Creek, waters of the State, classified for Fish & Wildlife.

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

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NTUs	Nephelometric Turbidity Units
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	Department-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

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

4. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to submit to the Department an NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

5. During an inspection of the Facility on March 4, 2008, the Department documented that the Operator had not registered for and obtained NPDES coverage prior to commencing regulated disturbance activities.

6. On April 15, 2008, the Operator submitted to the Department an NOR requesting NPDES coverage under ADEM Admin. Code chap. 335-6-12, for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration ALR16EBD2 to the Operator on April 15, 2008. Registration ALR16EBD2 expired on April 14, 2009.

7. Pursuant to ADEM Admin. Code r. 335-6-12-.05(2), all NPDES construction sites/activities and noncoal mining sites/activities less than five (5) acres in size in Alabama are required to fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the Operator's CBMPP that has been prepared by a QCP.

8. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(3) and 335-6-12-.28, the Operator is required to ensure that comprehensive inspections of the Facility, offsite areas and stormwater conveyances, and associated receiving waters are conducted according to a prescribed schedule, after significant precipitation, and as often as needed by a QCP, to ensure that effective BMPs have been properly designed, implemented, and maintained. Each day there is activity at the Facility, the Operator or other qualified person is required to observe that portion of the Facility where construction disturbance has occurred and report any apparent BMP deficiencies to the Operator or QCP.

9. During an inspection of the Facility on March 4, 2008, the Department documented that the Operator had not properly implemented and maintained effective BMPs as required

above, resulting in discharges of sediment and other pollutants in stormwater runoff to Moore Creek and Halls Creek.

10. In addition, pursuant to ADEM Admin. Code rs. 335-6-12-.26(5) and 335-6-10-.09, discharges from the Facility shall not cause turbidity downstream of the Facility to exceed upstream turbidity by 50 NTUs, nor shall discharges from the Facility cause substantial visible contrast in instream turbidity.

11. Analyses of water samples collected by the Department on March 4, 2008, from an UT to Moore Brook which receives stormwater discharges from the Facility, indicated an upstream turbidity of 55.5 NTUs and a downstream turbidity of 182 NTUs, resulting in an increase of 126.5 NTUs. Furthermore, stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity downstream of the Facility.

12. On April 8, 2008, a NOV was sent to the Operator by the Department as a result of the March 4, 2008, inspection. The NOV notified the Operator of deficiencies documented at the Facility, required the Operator to register for NPDES coverage, and to provide the Department with a copy of the CBMPP. In addition it required the Operator to provide a detailed plan for the temporary re-vegetation or cover of all disturbed areas not undergoing active disturbance or active construction and progressive construction for longer than thirteen days to the Department within seven days of receipt of the NOV. The Department has not received the required copy of the CBMPP or the detailed plan for vegetation.

13. The April 8, 2008, NOV also required the Operator to submit a proposed, detailed compliance schedule to correct all deficiencies for the Facility within ten days of receipt of the NOV. The Department has not received the required compliance schedule.

14. The April 8, 2008, NOV also requested the Operator to submit to the Department certification by a QCP that all deficiencies at the Facility had been corrected within fifteen days of receipt of the NOV. The Department has not received the required QCP certification.

15. The Department inspected the Facility on March 30, 2009, and documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to Moore Creek and Halls Creek.

16. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

17. During the inspection on March 30, 2009, accumulations of sediment resulting from discharges at the Facility were observed offsite by the Department.

18. On April 24, 2009, a NOV was sent to the Operator by the Department as a result of the March 30, 2009, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department a written report prepared by a QCP showing the steps that have been taken to correct the deficiencies noted. The Department has not received the required report.

19. The Department inspected the Facility on June 17, 2009, and documented that the Operator had not re-registered for and obtained NPDES coverage, although regulated disturbance activities and/or discharges were continuing. As provided above Registration ALR16EBD2 expired on April 14, 2009.

20. During the inspection of the Facility on June 17, 2009, the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to Moore Creek and Halls Creek. The Department also observed offsite accumulations of sediment resulting from discharges at the Facility.

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. That the Operator shall, immediately upon receipt of this Order, cease all regulated disturbance and related activity at the Facility other than BMP implementation and maintenance

until the Operator, in a manner acceptable to the Department, implements effective BMPs and corrects all deficiencies at the Facility, offsite conveyances, and affected State waters. Furthermore, regulated disturbance and related activity at the Facility other than BMP implementation and maintenance is not authorized to resume until approved in writing by the Department.

B. That, immediately upon receipt of this Order and continuing thereafter, the Operator shall take immediate action to prevent or minimize to the maximum extent practicable: sediment and other pollutants in stormwater leaving the Facility; prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State; and ensure full compliance with the requirements of ADEM Admin. Code chap. 335-6-12.

C. That, the Operator shall ensure that:

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

D. That, within five days of receipt of this Order, the Operator shall have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

E. That, within ten days of receipt of this Order, the Operator shall submit to the Department a complete NPDES registration, including the required fee, for the Facility.

F. That, within thirty days of receipt of this Order, the Operator shall fully implement effective BMPs, implement all plans required by this Order, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation in a manner acceptable to the Department. The Operator shall submit to the Department a certification that effective BMPs have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin. Code chap. 335-6-12 has been achieved at the Facility and offsite conveyances, including sediment removal or remediation in a manner acceptable to the Department.

G. That, within sixty days of receipt of this Order, the Operator shall remediate and/or remove any sediment and other pollutants from the Facility deposited offsite and shall submit a written report to the Department detailing the remediation and/or removal activities.

H. That, should the Operator be unable to meet a deadline set forth herein, the Operator may request a modification of said deadline if the delay is due to a *Force Majeure*. 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 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 required 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.

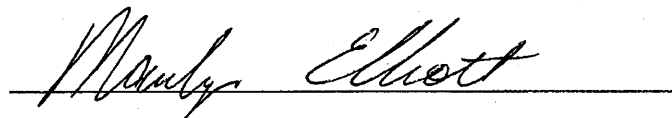
I. Should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and, therefore, unenforceable, the remaining provisions herein shall remain in full force and effect.

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 Operator of the Operator's obligations to comply in the future with any permit coverage.

K. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

L. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 2nd day of September, 2009.

A handwritten signature in cursive script, appearing to read "Onis 'Trey' Glenn, III", is written over a horizontal line.

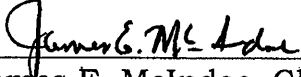
Onis "Trey" Glenn, III, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, James E. McIndoe, do hereby certify that I have served the executed Administrative Order Number 09-099-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt # 91-7108-2133-3936-3707-2971, with instructions to forward and return receipt to:

Todd Bertram
Pastor
The Sanctuary
1321 4th Avenue, SW
Bessemer, AL 35022

Done this 2nd day of September, 2009.



James E. McIndoe, Chief
Water Division
Alabama Dept. of Environmental Management