ADMINISTRATIVE ORDER

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
W L PETREY WHOLESALE CO	)	ADMINISTRATIVE
3150 TINE AVENUE	)	ORDER No 10-XXX-WP
MONTGOMERY, ALABAMA	)	
	)	
GENERAL NPDES PERMIT No. ALG 140148	)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.) and the Alabama Water Pollution Control Act, 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 "the Department") makes the following FINDINGS:

1. W L Petrey Wholesale Company (hereinafter, "Permittee") operates a trucking facility (hereinafter the "Facility") located at 3150 Tine Avenue, Montgomery, Montgomery County, Alabama. The Facility discharged pollutants from a point source into an Unnamed Tributary to the West End Ditch, a water of the state.

2. 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.).

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 October 1, 2007, the Department re-issued General National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number ALG140148 (hereinafter the "Permit") to the Permittee. The Permit establishes limitations on the discharge of pollutants from point sources, designated therein as outfall numbers DSN001-1 and DSN006-1 into an unnamed tributary to the West End Ditch, a water of the state. The Permit requires that the Permittee monitor its discharges and submit semi-annually and quarterly Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the analytical results. The Permit required that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit., The Permit also required the Permittee to maintain documentation and implementation of a Best Management Practices (hereinafter "BMP") plan.

5. On November 28, 2008, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") at the Facility. The Department documented the following concerns during the inspection: (1) non-submittal of DMRs for the months of July-September 2006, and April-June 2007, for outfall DSN006-1; (2) failure to implement a Spill Prevention Control and Countermeasure (hereinafter "SPCC") Plan; (3) failure to prepare and implement a BMP; (4) failure to maintain records for rainfall; and (5) significant spillage of fuel observed at the diesel storage tank.

6. On January 30, 2009, the Permittee was issued a Notice of Violation (hereinafter "NOV") and provided a written copy of the November 28, 2009, CEI Report. The NOV required that the Permittee submit to the Department within thirty days from receipt of the NOV a written report detailing the steps that have been taken or are being taken to correct the violations noted in the NOV. The report was due to be submitted to the Department on or before March 2, 2009. The Department has not received the required response.

7. Ala. Code § 22-22-9(e) (2006 Rplc. Vol.), requires a Permittee to respond within the specified time frame to a notice of violation or non-compliance by the Department. The Permttee violated Ala. Code § 22-22-9(e) (2006 Rplc. Vol.) by failing to respond to the NOV sent by the Department on January 30, 2008.

8. On November 12, 2009, the Department conducted a second CEI at the Facility. The Department documented during the inspection that: (1) records were not available for review; (2) required monitoring was not being performed; (3) sediment accumulation was observed near the inlet to the storm drain at the loading dock; (4) the diversion ditch on west portion of the facility was not properly stabilized; (5) a fuel spill was observed at the diesel storage tank; and (6) an unpermitted discharge point on the eastern portion of the Facility.

9. Permit provision I. A., requires that the Permittee monitor for specified parameters in accordance with a certain monitoring frequency. If there is a discharge, outfall DSN001-1 must be monitored semiannually and outfall DSN006-1 must be monitored quarterly. Permit provision I. C. 1. b., requires the Permittee to submit discharge monitoring reports (DMRs) on the forms provided by the Department and in accordance with a certain schedule. The semiannual and quarterly results must be recorded on DMRs and submitted semiannually to the Department. The first six months results are due in the Department no later than July 28th and the second six months results are due in the Department no later than January 28th.

10. During the November 12, 2009 inspection, the Department documented that the required monitoring was not being performed. A Departmental review of the Facility's submittals indicated that the semiannual (DSN001-1) and quarterly (DSN006-1) DMRs for the second six months of 2008, and the first and second six months of 2009, to date have not been received by the Department.

11. The Permittee violated Permit provision I. A. of the Permit by failing to monitor for Outfalls DSN001-1 and DSN006-1 in accordance with the Permit.

12. The Permittee violated Permit provision I. C. 1. b. of the Permit by failing to submit DMRs for the second six months of calendar year 2008, and the first six months DMRs of calendar year 2009.

13. Permit provision I. B. 4. b. provides that all records required to be kept for a period of three years shall be kept at the permitted facility or an alternate location approved by the Department in writing and shall be available for inspection. A complete copy of the permit should be maintained at the Facility.

14. The Department documented on November 12, 2009 during its inspection, that the Permittee's Permit and DMRs were not being maintained on-site and was not available for review.

15. The Permittee violated Permit Condition I. B. 4. b. of its Permit by failing to maintain on-site the Permit and DMRs.

16. Permit provision II. F. 2. a. (3) requires the Permittee to notify the Department at least 180 days in advance of any facility expansion, production increase, process change, or other action that could result in an additional discharge point.

17. The Department documented an unpermitted discharge on the eastern portion of the Facility during the November 12, 2009 inspection.

18. Permit provision IV. A. 1. a. requires the Permittee to prevent or control pollution of storm water by particles to the degree required to maintain compliance with the Permit and water quality standards. Erosion control should also be addressed.

19. The Department observed sediment accumulation near the inlet to the storm drain at the loading dock during the inspection on November 12, 2009. In addition,, the diversion ditch on the west portion of the Facility appeared to be improperly stabilized.

20. The Permittee violated Permit provision IV. A. 1. a. of its Permit by failing to prevent or control pollution of storm water by particles to the degree required to maintain compliance with the Permit and water quality standards.

21. Permit provision IV. A. 1. b. requires the Permittee to prevent the spillage or loss of fluids, oil, grease and gasoline.

22. The Department during the November 12, 2009 inspection, documented a fuel spill in association with the diesel storage tank.

23. The Permittee violated Permit provision IV. A. 1. b. of its Permit by failing to prevent the spillage or loss of fluids, oil, grease and gasoline.

24. Permit provisions IV. A. 4. a., b. and c. requires that the Permittee maintain a copy of the Best Management Practices (BMP) Plan, BMP inspection log, and BMP training records at the facility and that these records be available for inspection by representatives of the Department.

25. Furthermore, during the November 12, 2009 inspection, the Department documented that the BMP Plan, BMP inspection log, and BMP training records were not being maintained at the Facility.

26. The Permittee violated Permit provisions IV. A. 4. a., b. and c. of its Permit by failing to maintain and have available to the Department a copy of the BMP plan, BMP inspection log, and BMP training records.

27. 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 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 be less than $100.00 or exceed $25,000.00 for each violation, provided; however, 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 VIOLATION AND BASE PENALTY: The Department noted thirteen discrete violations of the Permit, ADEM Admin. Code r. 335-6, and the AWPCA. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public, the Department determined the base penalty to be $11,500.00.

B. THE STANDARD OF CARE: In considering this factor, the Department noted that a number of the violations, such as the submittal of DMRs, were non-technical requirements, violations of which should have been easily avoided. In consideration of the standard of care observed of the Operator, the Department enhanced the penalty by an additional $4,750.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee avoided certain costs associated with best management practices, sample collection and analysis, and the submittal of required reports; however, the Department has no evidence of any other avoided costs not otherwise addressed by compliance with this Order. The Department believes the civil penalty is sufficient to address any economic benefit associated with these costs.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of violations similar to those noted above as described in Paragraph 5. In consideration of the history of previous violations, the Department enhanced the penalty by an additional $2,250.00.

F. THE ABILITY TO PAY: The Department is unaware of any evidence indicating an inability to pay the civil penalty.

G. The civil penalty is summarized in Attachment 1.

ORDER

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

A. That, not later than forty-five days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of $18,500.00 for the violations stated herein.

B. 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. That the Permittee shall prepare and submit to the Department, not later than thirty days after the receipt of this Order; an Engineering Report that identifies all potential causes of noncompliance and that includes a schedule for implementation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number ALG140148 (i.e., a Compliance Plan) . The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance with the NPDES ALG140148, then the Permittee shall modify the report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments.

The Permittee shall complete implementation of the recommendations made in the Engineering Report within sixty days after the receipt of this Order.

D. The Permittee is required to prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental DMR Reporting System Program (hereinafter, "E2 Program") for all of its permitted facilities, so that it is received by the Department not later than thirty days after the receipt of this Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee must modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee shall begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee shall fully implement all aspects of the E2 Program including the cessation of federal paper DMR submittals, if applicable, no later than 180 days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee further must abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program.

E. The Permittee shall comply with all other terms, conditions, and limitations of its NPDES Permit after the issuance of this Administrative Order.

F. That this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

G. That 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 Order.

H. That, 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 provision hereof shall remain in full force and effect.

I. That, 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 its obligations to comply in the future with any permit.

J. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

K. That 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 _____ day of _____, _____.

_____

John P. Hagood
Director
Alabama Department of Environmental Management

Attachment 1
Penalty Calculation Worksheet

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to response to NOV	1	$3,000.00	$1,500.00	
Failure to conduct required monitoring of DSN001-1 and DSN006-1	2	$1,000.00	$500.00	
Failure to submit DMRs	2	$2,000.00	$1,000.00	$1,000.00
Failure to maintain records onsite	5	$500.00	$250.00	$250.00
Unpermitted discharge	1	$3,000.00	$1,500.00	
Failure to prevent or control the pollution of stormwater and address erosion control	1	$1,000.00		$500.00
Failure to prevent the loss or spillage of fluids	1	$1,000.00		$500.00
Totals:	13	$11,500.00	$4,750.00	$2,250.00
			Economic Benefit*:	**Unknown**
			Mitigating Factors:	**$0.00**
			Ability to Pay*:	**$0.00**
			Other Factors*:	**$0.00**
			Final Penalty:	**$18,500.00**

* Refer to the "Findings" of the Order for a description of each penalty factor