

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
City of Tuscumbia)	
Tuscumbia, Colbert County, AL)	Consent Order No. XX-XXX-WP
NPDES Permit No. ALR040022)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the City of Tuscumbia (hereinafter "the Permittee"), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-17, as amended, the 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.

STIPULATIONS

A. The Permittee operates a municipal separate storm sewer system (hereinafter "MS4") located in Tuscumbia, Colbert County, Alabama. The Permittee discharges pollutants from the MS4 to waters of the state.

B. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended.

C. 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 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

D. The Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. ALR040022 to the Permittee on January 31, 2011, effective February 1, 2011, establishing limits on the discharge of pollutants from the MS4 to waters of the State. The Permit was modified on February 24, 2012. The Permit expired January 31, 2016. The Permit was not reissued or replaced prior to the expiration date, but because the Permittee re-applied for coverage as required under Part II of the Permit, it has been administratively continued in accordance with the ADEM Admin. Code r. 335-6-6 and remains in force and effect. [To be administratively extended, the Department had to receive the Permittee's Notice of Intent (hereinafter "NOI") by November 1, 2015. The Department received the Permittee's NOI on August 24, 2015.]

E. Part II.A.4 of the Permit requires the operator to submit a storm water management program (hereinafter "SWMP") plan to the Department within six months of coverage under the Permit. The SWMP plan was due to the Department on or about August 1, 2011.

F. Part III of the Permit states the requirements for SWMP plans.

G. On April 15, 2011, the Department received the SWMP plan from the Permittee.

H. On August 26, 2015, the Department conducted an audit of the Permittee's MS4 program in order to determine compliance with the Permit. During the audit, the Permittee was not able to provide documentation that it had implemented the best management practices (BMPs) as outlined in its SWMP plan. During the audit, the Department requested that the Permittee submit such documentation to the Department no later than September 5, 2015.

I. In a letter dated September 23, 2015, the Department informed the Permittee of the findings of the August 26, 2015 audit. The Department also notified the Permittee that it had not yet received the documentation as requested during the August 26, 2015 audit. The Permittee has not submitted the requested documentation to the Department.

J. Part V.C.1 of the Permit requires the Permittee to submit an annual report (hereinafter "Annual Report") to the Department no later than March 31st of each year.

K. On March 24, 2015, the Department received the 2014-2015 Annual Report from the Permittee.

DEPARTMENT'S CONTENTIONS

A. The Department conducted a review of the Permittee's 2014-2015 Annual Report and 2011 SWMP Plan. Based on its review of the aforementioned documents, along with the August 2015 audit, the Department determined that the Permittee has not complied with the Permit requirements, as specified below:

1. Part III.B.1.b details the requirements for the Public Education and Outreach Control Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPS were implemented, the Permittee could not provide documentation during or after the August 2015 audit to show that all the educational BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.
2. Part III.B.2 details the requirements for the Public Involvement/Participation Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPs were implemented, the Permittee could not provide documentation during or after the August 2015 audit to show that all these public involvement/public participation BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.
3. Part III.B.3 details the requirements for the Illicit Discharge Detection and Elimination (IDDE) Control Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPs were implemented, the Permittee could not provide documentation during or after the August 2015

audit to show that all these IDDE BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.

4. Part III.B.4 details the requirements for the Construction Site Storm Water Runoff Control Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPs were implemented, the Permittee could not provide documentation during or after the August 2015 audit to show that all these BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.
5. Part III.B.5 details the requirements for the Post-Construction Storm Water Management in New Development and Redevelopment Control Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPs were implemented, the Permittee could not provide documentation in during or after the August 2015 audit to show that all these BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.
6. Part III.B.6 details the requirements for the Pollution Prevention/Good Housekeeping for Municipal Operations Control Measure. While the Permittee's SWMP plan outlines BMPs to be implemented to meet the Permit requirements and the 2014-2015 Annual Report states that these BMPs were implemented, the Permittee could not provide documentation during or after the August 2015 audit to show that all these BMPs were implemented as outlined in the SWMP plan and stated in the Annual Report.
7. Part V.C.1 details the requirements for the Reporting. The Annual Report did not meet the requirements of condition Part V.C.1, as follows:
 - a. The Permittee did not specify 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 MEP, and the measureable goals for each of the minimum control measures.

- b. The Permittee did not analyze the monitoring data to assess the success of the program at reducing the discharge of pollutants to the MEP.
- c. The Permittee did not specify a summary of the storm water activities planned for the next reporting cycle, to include an implementation schedule.
- d. The Permittee did not specify proposed changes to the SWMP, including changes to any BMPs or any identified measureable goals that apply to the program elements.

8. Part VI.E. requires the Permittee to furnish, within a reasonable time, any information which may be requested to determine whether cause exists for modifying, revoking and reissuing, suspending, or terminating the permit or to determine compliance with the permit. The Permittee shall also furnish, upon request, copies of records required by the Permit. The Permittee did not submit the documentation of the 2014-2015 SWMP activities as requested by the Department during the audit on August 26, 2015 or by the requested date of September 5, 2015.

B. 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 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 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:

1. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on the information available to the Department, numerous violations of the Permit were noted. The Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to public.
2. **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. In consideration of the standard of care, the Department enhanced the civil penalty.
3. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.
4. **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.
5. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a history of previous violations. On October 29, 2007, the Department issued a Notice of Violation (NOV) to the Permittee for failure to submit a timely renewal application. On June 3, 2009, the Department issued a Warning Letter to the Permittee for the late submittal of an Annual Report. In consideration of such history, the Department has not enhanced the civil penalty.
6. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

7. The civil penalty is summarized in Attachment 1.
8. The Department neither admits nor denies the Permittee's contentions, which are set forth below. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

- A. Tuscumbia's response to the Department's MS4 audit findings dated March 8, 2016, which response is incorporated herein by this reference, as if fully set forth herein.
- B. Tuscumbia's Stormwater Annual Review dated March 31, 2016, which is incorporated herein by this reference, as if fully set forth herein.

ORDER

Therefore, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

- A. The Permittee shall pay to the Department a civil penalty in the amount of \$8,000.00 in settlement of the violations herein, not later than forty-five days from the issuance date of this Order. Failure to pay the civil penalty within forty-five days from the issuance 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 institute procedures to ensure that all stormwater BMPs are implemented and documented as stated in the Permittee's SWMP plan.
- D. Upon receipt of this Order, the Permittee shall institute procedures to ensure that all subsequent Annual Reports submitted to the Department are complete and accurate.
- E. For purposes of this Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its 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 Permittee) 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. The Permittee shall submit this information so that it is received by 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 Permittee, 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 it is not obligated to do so.

- F. This Consent 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.
- G. 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 hereof shall remain in full force and effect.
- H. Any modifications of this Consent Order shall be agreed to in writing and signed by both Parties.
- I. 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

City of Tuscumbia, Alabama

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

By: <u>Billy S. Sheemaker</u>	By: _____
Its: <u>Mayor</u>	Its: _____
Date: <u>May 16, 2016</u>	Date: _____

**Attachment 1
PENALTY CALCULATION WORKSHEET**

**City of Tuscumbia
ALR040022**

Violation*	Number of Violations*	(A)	(B)	(C)									
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*									
Failure to implement and document SWMP activities	1	\$ 6,000.00	\$ 3,000.00										
Failure to submit requested information to the Department in a timely manner	1	\$ 1,250.00	\$ 500.00	\$ -----									
		Total (A)	Total (B)	Total (C)									
		\$7,250.00	\$3,500.00	\$ -----									
Additional Adjustments due to negotiations, information, or public comm <table border="1"> <tr> <td>Mitigating Factors (-)</td> <td></td> </tr> <tr> <td>Economic Benefit (+)</td> <td></td> </tr> <tr> <td>Ability to Pay (-)</td> <td></td> </tr> <tr> <td>Other Factors (+/-)</td> <td align="right">(\$2,750)</td> </tr> <tr> <td>Total Adjustments (+/-)</td> <td align="right">(\$2,750)</td> </tr> </table>		Mitigating Factors (-)		Economic Benefit (+)		Ability to Pay (-)		Other Factors (+/-)	(\$2,750)	Total Adjustments (+/-)	(\$2,750)	Base Penalty Total [Total (A) + Total (B) + Total (C)]	\$10,750.00
		Mitigating Factors (-)											
		Economic Benefit (+)											
		Ability to Pay (-)											
		Other Factors (+/-)	(\$2,750)										
		Total Adjustments (+/-)	(\$2,750)										
Mitigating Factors (-)													
Economic Benefit (+)													
Ability to Pay (-)													
Other Factors (+/-)	(\$2,750)												
INITIAL PENALTY	\$8,000.00												
Total Adjustments (+/-)	(\$2,750)												
FINAL PENALTY	\$8,000.00												

Footnotes

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