

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

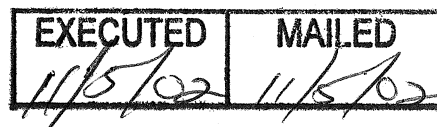
Jefferson County Board of Education
Paine Elementary School
Jefferson County, ALABAMA

CONSENT ORDER NO. 03-024-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act §402, 33 U.S.C. § 1342, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management makes the following FINDINGS:

1. Jefferson County Board of Education (hereinafter "Permittee") is the responsible party for the Paine Elementary School facility located on AL Highway 11, Jefferson County, Alabama. Bobby Neighbors is a member of the Jefferson County Board of Education and the



responsible official for the Paine Elementary School site, which is located at T16S, R1E, S18.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), § 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, 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 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. For Paine Elementary School, on August 6, 2001, the Department issued authorization to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR106045. The NPDES permit regulates the Permittee's discharges into an unnamed tributary of Little Cahaba Creek and imposes limitations and monitoring requirements.

5. Part II, B., 2., a. & b., of NPDES General Permit No. ALG610000 requires the Permittee to prepare and implement BMPs to prevent/minimize the discharge of all sources of pollution (i.e. sediment, trash, garbage, debris, oil & grease, chemicals, materials, etc.) to State waters in storm water runoff. During inspections conducted at Paine Elementary School by Department personnel on September 4, 2001 and April 3, 2002 the Permittee was found to be in violation of Part II, B., 2., a. & b., of NPDES General Permit No. ALG610000. Specifically, it was observed during the inspections that several acres of disturbed ground were without adequate erosion and/or sediment control structures. Sediments were observed

in the unnamed tributary to the Little Cahaba Creek, immediately down-gradient from the site during the inspections. On September 4, 2001, a water sample of the effluent and instream sampling indicated that a violation of State Water Quality Standards for turbidity occurred in the unnamed tributary to the Little Cahaba Creek.

6. Part II, B, 3, of NPDES General Permit No. ALG610000 states that “the Permittee shall prepare and implement a Spill Prevention, Control and Countermeasures (SPCC) Plan for any on-site fuel tank in excess of 660gal, or a combined total storage of 1320gal.”

7. An inspection of the Paine Elementary School site conducted by Department personnel on April 3, 2002 found an on-site diesel fuel tank of greater than 660 gallon capacity and no written SPCC plan, in violation of Part II, B, 3, of NPDES General Permit No. ALG610000.

8. Part II, C., 3., of NPDES General Permit No. ALG610000 requires the Permittee to clearly display, prior to commencement of any regulated activity and until authorization is terminated by the Department, the name of the Permittee, “ADEM NPDES ALR” followed by the six-digit NPDES authorization number, facility project name and other information. The site inspection conducted at Paine Elementary School by the Department on April 3, 2002 found no NPDES authorization number displayed.

9. The Permittee neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Jefferson County Board of Education has consented to the terms of this Consent Order.

10. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of Jefferson County Board of Education, it is hereby ORDERED:

A. That, immediately upon the date of execution of this Consent Order, the Permittee shall fully implement and regularly maintain temporary BMPs adequate to prevent sediment in storm water from leaving the site. Said BMPs shall also be adequate to eliminate the discharge of sediment and other pollutants in stormwater runoff discharging into waters of the State of Alabama. Further, these BMPs shall conform to the EPA document entitled *Storm Water Management for Construction Activities* and shall contain other measures as necessary to eliminate the discharge of pollutants from this project.

B. That, not later than fifteen (15) days after the date of execution of this Consent Order, the Permittee shall prepare and submit to the Department an updated plan for implementing appropriate permanent structural and non-structural BMPs that are adequate to prevent or minimize, to the extent possible, sediment and other pollutants in the stormwater runoff from discharging into waters of the State. This plan, at a minimum, must meet the standards found in the EPA manual referenced in Paragraph A above. In addition, this plan must be certified by a qualified, credentialed professional licensed to practice in Alabama. If the plan submitted to the Department is not sufficient to

accomplish the aforementioned tasks, it shall be modified immediately by the Permittee so that it does accomplish the task.

C. That, within thirty (30) days after the date of execution of this Consent Order, the Permittee shall fully implement and regularly maintain BMPs adequate to prevent sediment in stormwater from leaving the site. Said BMPs shall also be adequate to eliminate the discharge of sediment and other pollutants in stormwater runoff discharging into waters of the State of Alabama. Further, these BMPs shall conform to the EPA document entitled *Storm Water Management for Construction Activities* and shall contain other measures as necessary to eliminate the discharge of pollutants from this project.

D. That, within forty-five (45) days from the date of execution of this Consent Order, the Permittee shall submit to the Department certification from a qualified, credentialed professional that the BMP plan has been fully implemented and is effective in controlling turbidity and eliminating the discharge of sediment into waters of the State of Alabama.

E. That, within forty-five (45) days from the date of execution of this Consent Order, the Permittee shall submit a remediation plan prepared by a qualified credentialed professional, for the removal of sediment from the unnamed tributary of the Little Cahaba Creek as a means of remediating environmental damage caused as a result of polluted stormwater runoff from the site. The plan shall include a detailed proposed completion schedule. The details and schedule of the plan are to be coordinated with and accepted by the Department and subsequently implemented. The Permittee shall modify the remediation plan within seven (7) days of receipt of any comments from the Department during the life of the remediation project.

F. That, the Permittee shall conduct the monthly inspections required by Part I.B. of NPDES General Permit No. ALG610000. These inspections shall be conducted by a qualified, credentialed professional. Further, the inspections results shall be provided to the Department in inspection reports which shall be certified by the qualified, credentialed professional for accuracy and shall be submitted to the Department by the 28th day of the month following the month in which the inspection is conducted. The Department may release the Permittee from the requirements of this paragraph regarding the monthly submittal of the inspection reports upon the submission of a written request for such if the Permittee is in compliance with the requirements of NPDES General Permit No. ALG610000 and this Consent Order for twelve (12) consecutive months. Said request shall include copies of all data or other reports necessary to show compliance for the appropriate time period. Said release, if granted, shall not relieve the Permittee from any inspection or any other requirements imposed by NPDES General Permit No. ALG610000. The Department may also release the Permittee from the requirements of this paragraph at any time if the Permittee requests on Department forms, and is approved, termination of its permit. This will require the site to be completely developed with discharge of pollutants to waters of the State minimized.

G. That, from the date of execution of this Consent Order, and before 180 days after the date of execution of this Consent Order, for every day in which an action required by this Consent Order is not fully implemented as required by the terms of this Consent Order, the Permittee shall pay a stipulated penalty to the Department the sum of Two Hundred Dollars (\$200) for each day in which the deadline is not met. Payment of said penalty shall be due not later than thirty (30) calendar days after the due date of the action

and every thirty (30) calendar days thereafter, if necessary. Notification to the Permittee by the Department of the assessment of the stipulated penalty is not required, and the civil penalty is due and payable to the Department within thirty (30) calendar days after the due date of the action and each thirty (30) calendar days thereafter, if necessary, regardless of whether demand for the stipulated penalty has been received by the Permittee.

H. That, for all permitted sites for which the Permittee is the responsible party, for every violation of the State water turbidity standards pursuant to ADEM admin. Code R. 335-6-10, the Permittee shall pay to the Department the sum of Five Hundred Dollars (\$500) for each and every violation after the effective date of this Consent Order and before 180 days after the effective date of this Consent Order.

I. That, the cumulative stipulated penalties described in paragraphs G and H above shall under no circumstances exceed \$10,000, nor shall stipulated penalties be due for longer than thirty (30) days after the effective date of this Consent Order. Once stipulated penalties of \$10,000 are paid to the Department and violations continue to occur, or, should violations occur after 180 days after the effective date of this Consent Order, the Department shall be free to file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to collect said penalties and enforce compliance of this Consent Order.

J. 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

K. 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.

L. 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.

M. That, the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. That, for purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 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 be beyond the reasonable control of the Permittee) and which delays or prevents performances 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 three (3) business 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 specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

O. 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 facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall 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 Permittee 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.

P. That, by agreement of the parties, 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.

Jefferson County Board of Education

Bobby Neighbors
Dr. Bobby Neighbors

Superintendent of Ed.
Title

Date Signed: 10-25-02

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

James W. Warr
James W. Warr

Director

Date Signed: 5 Nov 02