

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

July 15, 2014

**CERTIFIED MAIL**

Edwin Lumpkin, Jr.  
Lumpkin Development  
100 Metro Parkway  
Pelham AL 35124

RE: Final Consent Order 14-078-CLD  
NPDES Permit No. ALR10AC09  
Shelby County (117)

Dear Mr. Lumpkin:

Please find the enclosed Special Order by Consent Order which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Lumpkin Development.

The draft order was made available for public review for a period of 30 days beginning on June 4, 2014. No public comments were received.

The enclosed Special Order by Consent is effective immediately. Please note that the assessed civil penalty is due in full within 45 days.

Should you have any questions regarding the order please contact Clay James, by email at [cjames@adem.state.al.us](mailto:cjames@adem.state.al.us) or by phone at (205) 942-6168.

Sincerely,

Steven O. Jenkins, Chief  
Field Operations Division

SOJ/deh

File: ECO/44391

Enclosure

cc: Thomas L. Johnston, ADEM  
Valerie Jackson, ADEM  
Scott Hughes, ADEM  
Birmingham Branch, 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  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

EDWIN B LUMPKIN JR  
DBA LUMPKIN DEVELOPMENT  
WOODYARD SITE ON HWY 280  
CHELSEA, SHELBY COUNTY, ALABAMA  
T19S R1W S29  
NPDES PERMIT ALR10AC09

ORDER 14-078-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Edwin B Lumpkin Jr DBA Lumpkin Development (hereinafter "Operator") 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.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (2006).

STIPULATIONS

1. The Operator is Edwin B. Lumpkin, Jr. doing business as, Lumpkin Development. Mr. Edawrd B. Lumpkin, Jr. is an Alabama developer conducting the construction on the commercial property, known as the Woodyard Site, on Hwy 280 (hereinafter "Facility") located off of US Highway 280, in Chelsea, Shelby County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Muddy Prong Creek and an unnamed tributary to Muddy Prong Creek, both waters 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 (2006). 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 22-22A-14 (2006 Rplc. Vol.).

4. The following references and acronyms are used in this Consent 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
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary
WL	Warning Letter

5. 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 NOI in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. During inspection of the Facility on August 13, 2013, the Department documented that the Operator had not registered for and obtained NPDES coverage and that regulated disturbance activities and/or discharges were continuing in violation of ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1).

7. ADEM Admin. Code r. 335-6-12-.21(1) provides that commencement and/or continuation of NPDES construction activity is prohibited unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements ADEM Admin Code chap. 335-6-12 and applicable requirements of ADEM Administrative Code Division 335-6. The CBMPP and any BMPs shall meet or exceed the technical standards of ADEM Admin. Code chap. 335-6-12, and the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas published by the Alabama Soil and Water Conservation

Committee (hereinafter the "Alabama Handbook") and the site-specific CBMPP prepared in accordance with Part III. D.

8. During the August 13, 2013, inspection of the Facility, the Department observed and documented that the Operator had not properly implemented and maintained effective BMPs, although NPDES construction activity was continuing, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

9. ADEM Admin. Code r. 335-6-12-.35(10) requires operators to promptly take all reasonable steps to determine the nature and impact of non-complying discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

10. During the August 13, 2013, inspection, accumulations of sediment resulting from discharges at the Facility was observed by the Department offsite and in a UT to Muddy Prong Creek, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

11. On September 10, 2013, an NOV was sent to the Operator by the Department, as a result of the August 13, 2013, inspection. The NOV notified the Operator of deficiencies documented at the Facility.

12. On September 25, 2013, the Operator submitted to the Department an NOI requesting NPDES coverage under ADEM Admin. Code chap. 335-6-12 and NPDES Permit No. ALR100000, for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration ALR10AC09 to the Operator on September 25, 2013.

13. On January 30, 2014, the Department issued Administrative Cease and Desist Order (Stop Work) 14-035-LD (hereinafter "AO 14-035-LD") for deficiencies observed and documented during an inspection of the Facility on August 13, 2013.

14. ADEM Administrative Order 14-035-LD states that the Operator shall **IMMEDIATELY CEASE** all construction, building, production, and related activity at the Facility other than BMP implementation / maintenance, and sediment removal / remediation. Construction and related activity other than BMP implementation / maintenance, and



sediment removal / remediation is not authorized to resume until approved in writing by the Department.

15. During the March 20, 2014, inspection of the Facility, the Department observed and documented that, the Operator was removing the sawmill building that was onsite, in violation of AO 14-035-LD, and was not maintaining/implementing BMPs at the time of the inspection.

16. ADEM Admin. Code r. 335-6-12-.21(1) and Part III,D,(1) of NPDES General Permit ALR100000, provides that commencement and/or continuation of NPDES construction activity is prohibited unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements of ADEM Admin. Code chap. 335-6-12 and applicable requirements of ADEM Administrative Code Division 335-6. The CBMPP and any BMPs shall meet or exceed the technical standards of ADEM Admin. Code chap. 335-6-12, and the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas published by the Alabama Soil and Water Conservation Committee (hereinafter the "Alabama Handbook") and the site-specific CBMPP prepared in accordance with Part III. D.

17. During the March 20, 2014, inspection of the Facility, the Department documented and observed that, the Operator had not properly implemented and maintained effective BMPs although NPDES construction activity had commenced and was continuing, in violation of ADEM Admin. Code r. 335-6-12-.21(1), Part III,D,(1) of General Permit ALR10AC09 and AO 14-035-LD.

18. ADEM Admin. Code r. 335-6-12-.35(10) and Part III, H, (3) of NPDES General Permit ALR100000, requires operators to promptly take all reasonable steps to determine the nature and impact of non-complying discharge, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

19. During the March 20, 2014, inspections, significant accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department

offsite and in an unnamed tributary to Muddy Prong Creek, in violation of ADEM Admin. Code r. 335-6-12-.35(10), Part III, H, (3) of General Permit ALR10AC09 and AO 14-035-LD.

20. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

21. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### CONTENTIONS

22. 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 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 twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day 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:** Considering the general nature of the violation, the magnitude and duration of the violation, its effects, if any on impaired waters, and lack of any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$22,000.00

B. **THE STANDARD OF CARE:** In consideration of the standard of care by the Operator, the Department did enhance the penalty by \$5,500.00



C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economical benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements, the Department did enhance the penalty by \$200.00

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has documented previous violations by the owner/operator at both Polymet and County Road 87 Industrial Lot, resulting in formal enforcement action(s). Therefore, the Department enhanced the penalty by an additional \$4,000.00

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

G. It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

#### ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement.

The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$22,000.00 in settlement of the violations alleged herein within forty-five days from the date of issuance of this Consent Order. Failure to pay the civil penalty within forty-five days from the date of issuance of this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Operator agrees that all penalties due pursuant to this Consent 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  
PO Box 301463  
Montgomery, Alabama 36130-1463

C. The Operator agrees to take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. The Operator agrees that, within five days of the date of issuance of this Consent Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. The Operator agrees that, within ten days of the date of issuance of this Consent Order, the Operator shall submit to the Department the results of the QCP comprehensive inspection and a plan to return the Facility, offsite conveyances, and affected State waters to compliance with Permit requirements.

F. The Operator agrees that, within ten days of the date of issuance of this Consent Order, the Operator shall submit to the Department a CBMPP, prepared/certified by a QCP, detailing effective BMPs that meet or exceed the technical standards outlined in ADEM Admin. Code chap. 335-6-12 and the Alabama Handbook.

G. The Operator agrees that, within thirty days of the date of issuance of of this Consent Order, the Operator shall fully implement effective BMPs, designed by a QCP, that



meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

H. The Operator agrees that, within seven days from the date of completion of the activities required in G above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12 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, offsite conveyances, and affected State waters.

I. The Parties agree 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.

J. The Parties agree 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.

K. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, the Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator 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 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 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 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 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.

M. The Parties agree 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 may 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 Operator 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.

N. The Parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.



O. The Parties agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

P. The Parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

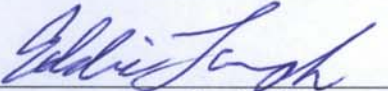
Q. The Parties agree that, should any provision of this Consent Order be declared by a Court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

R. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

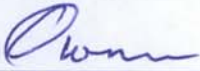
S. The Parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

Executed in duplicate with each part being an original.

EDWIN B LUMPKIN JR  
DBA LUMPKIN DEVELOPMENT


  
(Signature of Authorized Representative)

Eddie Lumpkin  
(Print Name of Authorized Representative)

  
Title

Date Signed: 5/29/14

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
Lance R. LeFleur  
Director

Date Signed: 7/15/2014

**Attachment 1  
Penalty Synopsis**

**Lumpkin Development - Woodyard Site on Hwy 280 - ALR10AC09**

<b>Violation</b>	<b>Number of Violations</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Effective Best Management Practices (BMPs) not implemented or maintained	2	\$6,000	\$1,500	\$1,500
Discharge/accumulation of Sediment Off-site	2	\$10,000	\$2,500	\$2,500
Failure to comply with a Stop Work Order	1	\$6,000	\$1,500	
<b>Totals:</b>	<b>5</b>	<b>\$22,000</b>	<b>\$5,500</b>	<b>\$4,000</b>
<b>Economic Benefit*:</b>				<b>\$200</b>
<b>Mitigating Factors:</b>				<b>\$0</b>
<b>Ability to Pay*:</b>				<b>\$0</b>
<b>Other Factors*:</b>				<b>(\$9,700)</b>
<b>Final Penalty:</b>				<b>\$22,000.00</b>

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