

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

October 3, 2011

CERTIFIED MAIL

WILLIAM E WARE
BOLLEE PARTNERS LLC
102 BEAM ROAD
ENTERPRISE AL 36330

RE: CONSENT ORDER 12-001-CWP
Park Place
Intersection of Boll Weevil Circle and AL Hwy 27
NPDES ALR16EGRK
Coffee County (031)

Dear Mr. Ware:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Darby Clark, Office of Field Services**, by email at **dclark@adem.state.al.us** or by phone at **(334) 394-4306**.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Jenkins", with a long horizontal line extending to the right.

Steven O. Jenkins, Chief
Field Operations Division

soj/jdc File:ECO/40068

Enclosure: Signed Original Consent Order

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)

BOLLEE PARTNERS, LLC)

PARK PLACE)

ENTERPRISE, COFFEE COUNTY, ALABAMA)

NPDES ALR16EGRK)

CONSENT ORDER 12-001-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Bollee Partners, LLC (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.

STIPULATIONS

1. The Operator is an Alabama limited liability company constructing a retail shopping center at Park Place (hereinafter "Facility") located in T4N, R22E, S15, south of the intersection of Boll Weevil Circle (US Hwy 84) and Lee Street (AL Hwy 27) in the city of Enterprise, Coffee County, Alabama.

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. 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

NOI	Notice of Intent
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NTUs	Nephelometric Turbidity Units
QCP	ADEM-recognized Qualified Credentialed Professional

5. On February 15, 2011, the Operator submitted to the Department a 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 issued NPDES permit coverage ALR16EGRK to the Operator on March 24, 2011. NPDES permit coverage ALR16EGRK is scheduled to expire on March 23, 2012.

6. 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 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").

7. 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 to obtain NPDES coverage or modify existing permit coverage prior to commencing regulated disturbance activities outside of the permitted area.

8. During an inspection of the Facility on June 22, 2011, the Department documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code r. 335-6-12-.21(1). The Department also documented that the Operator had excavated buried solid waste and was stockpiling it outside of the permitted area, in violation of ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1).

9. 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.

10. Analyses of water samples collected by the Department on June 22, 2011, from an unnamed tributary to Harrand Creek, which receives stormwater discharges from the Facility, indicated an upstream turbidity of 32.3 NTUs and a downstream turbidity of 342 NTUs, resulting in an increase of 309.7 NTUs. During the June 22, 2011, inspection, the Department observed that stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity in an unnamed tributary to Harrand Creek, in violation of ADEM Admin. Code r. 335-6-10-.09.

11. On July 8, 2011, a NOV was sent to the Operator by the Department as a result of the June 22, 2011, inspection. The NOV notified the Operator of deficiencies documented at the Facility, requested the Operator to submit to the Department a BMP site assessment report, site survey, and copies of the inspection reports for the Facility within fifteen days of receipt of the NOV. The 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.

12. On July 29, 2011, the Operator submitted a response to the July 8, 2011, NOV. The response included documentation that the Operator submitted a request to the Department on July 29, 2011, to modify their NOR. Also, included in the response were BMP inspection reports along with corresponding photo documentation, and a QCP response to deficiencies noted in the NOV.

13. The Operator neither admits nor denies the Department's allegations. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

14. 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

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 violations, 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 violations 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 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 violations, the seriousness of the violations, their effects, if any on impaired waters, and any available evidence of harm to the environment or threat to the public, the Department determined the base penalty to be \$18,000.

B. **THE STANDARD OF CARE:** In considering this factor, the Department noted that Harrand Creek is on the Clean Water Act Section 303(d) list for impaired waters. The Department also noted that the failure to fully implement BMPs resulted in a violation of water quality standards for turbidity, that BMPs were not fully implemented for work in the receiving stream resulting in significant sedimentation, and that buried solid waste had been excavated and stockpiled outside of the permitted area. These violations could have been avoided by continual implementation and maintenance of effective BMPs. In consideration of the standard of care by the Operator, the Department enhanced the penalty by an additional \$6,700.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Operator has delayed certain costs associated with implementing and maintaining effective BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional \$100.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** After receiving the Department's July 8, 2011, NOV, the Operator contends that it undertook diligent efforts to effectively address the noted violations and to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department has not documented previous violations by the Operator.

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

G. 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., as amended, 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 \$24,800 in settlement of the violations alleged herein. The Operator and the Department agree that the administrative penalty assessed herein shall be paid by the Operator to the Department according to the schedule in the table below. The Operator agrees that, in the event the Operator fails to comply with any of the requirements of this Consent Order within the time provided, the remainder of the full assessed civil penalty shall become immediately due and payable.

Payment #	Amount	Due Date
1	\$9,500	October 1, 2011
2	\$1,700	November 1, 2011
3	\$1,700	December 1, 2011
4	\$1,700	January 1, 2012
5	\$1,700	February 1, 2012
6	\$1,700	March 1, 2012
7	\$1,700	April 1, 2012
8	\$1,700	May 1, 2012
9	\$1,700	June 1, 2012
10	\$1,700	July 1, 2012
TOTAL	\$24,800	

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 that, immediately upon receipt of this Consent Order, the Operator shall 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. The Operator further agrees that regulated disturbance and related activity at the Facility other than BMP implementation and maintenance is not authorized to resume until certification as required in Paragraph H below has been submitted to, and accepted by, the Department.

D. 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.

E. The Operator agrees, unless relieved of this requirement in writing by the Department, 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 a QCP;
3. all applications, plans, and information shall be certified by a QCP;
4. all submittals to the Department shall comply with applicable ADEM 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/work including his or her QCP designation, how the inspection/work was conducted, and the results of the inspection/work.

The Operator agrees, within seven days of the receipt of any written comments from the Department, to modify in writing any application, plan, information, report, or other submittal, or submit additional written information/clarification to the Department to address any comments made by the Department.

F. The Operator agrees that, within five days of the effective date of this Consent Order, the Operator shall have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

G. The Operator agrees, within twenty days after the effective date of this Consent Order, to fully implement and maintain effective BMPs and correct all deficiencies at the Facility, offsite conveyances, and

affected State waters. The BMPs shall meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12.

H. The Operator agrees, within twenty-five days after the effective date of this Consent Order, to submit to the Department a certification with photo-documentation 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, offsite conveyances, and affected State waters.

I. The Operator agrees, unless released in writing by the Department, to conduct comprehensive monthly inspections of the Facility for 365 days after the effective date of this Consent Order. The Operator agrees, within seven days after each inspection unless extended in writing by the Department, to correct any deficiencies noted during the inspection and to submit to the Department a written report with photo-documentation detailing the results of the inspection, including certification that the Facility is in full compliance with ADEM requirements.

J. The Department and the Operator (hereinafter "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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

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

T. 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.

BOLLEE PARTNERS, LLC


(Signature of Authorized Representative)

HARRY M. LYNCH
(Print Name of Authorized Representative)

Manning Portman
Title

Date Signed: 8-16-2011

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. LeFleur, Director

Date Signed: 10/3/2011

ATTACHMENT 1 - PENALTY SYNOPSIS

BOLLEE PARTNERS, LLC - PARK PLACE

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operating an NPDES construction site without, or outside of, NPDES coverage.	1	\$5,000	\$1,675	
Effective Best Management Practices (BMPs) not implemented and/or maintained	1	\$3,000	\$1,675	
Discharge/accumulation of sediment offsite	1	\$5,000	\$1,675	
Water Quality Standard violation	1	\$5,000	\$1,675	
Totals:	4	\$18,000	\$6,700	
Economic Benefit*:				\$100
Mitigating Factors:				
Ability to Pay*:				
Other Factors*:				
Final Penalty:				\$24,800

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