

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

ROBERT J. BENTLEY
GOVERNOR

November 9, 2012

CERTIFIED MAIL

GENE RITZ
APEX CONSTRUCTION SERVICES, LLC
9057 MANCHESTER HWY
MORRISON, TN 37357

RE: CONSENT ORDER 13-011-CLD
The Edge at Troy
Pike County (109)
NPDES ALR108000
T10N, R21E, S32, southern side of Elm Street directly across from Turnipseed Avenue

Dear Mr. Ritz:

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.

Attached is the Department's Response To Comments received as a result of the public comment period.

Should you have any questions concerning this matter, please contact **Ryan Cooper, Office of Field Services**, by email at rcoper@adem.state.al.us or by phone at (334) 274-4205.

Sincerely,

Steven O. Jenkins, Chief
Field Operations Division

SOJ/rdc File:ECO/37127

Enclosure: Signed Original Consent Order
Response To Comments



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

APEX CONSTRUCTION SERVICES, LLC)
THE EDGE AT TROY)
T10N, R21E, S32)
TROY, PIKE COUNTY, ALABAMA)
NPDES ALR108000)

CONSENT ORDER 13-011-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Apex Construction Services, 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 a Tennessee foreign limited liability company constructing a residential condominium development at The Edge at Troy (hereinafter "Facility"), located in T10N, R21E, S32, on the southern side of Elm Street directly across from Turnipseed Avenue in the City of Troy, Pike County, Alabama. Gene Ritz is the member responsible for the Operator's compliance with State and federal environmental laws and regulations.

2. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to a UT to Persimmon Branch, a water of the State.

3. 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.

AO	Administrative Order
BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NPDES	National Pollutant Discharge Elimination System
NTUs	Nephelometric Turbidity Units
QCP	ADEM-recognized Qualified Credentialed Professional

4. 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.).

5. 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.).

6. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

7. On August 25, 2011, the Operator submitted to the Department an application requesting NPDES permit coverage for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted NPDES permit coverage ALR108000 to the Operator on September 1, 2011. NPDES permit coverage ALR108000 is scheduled to expire on March 31, 2016.

8. 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 Admin. Code div. 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").

9. ADEM Admin. Code r. 335-6-12-.06(3) requires the operator, upon the reduction in effectiveness, loss, or failure of a treatment facility or BMP, to control/suspend/cease construction until the BMP/control is restored. ADEM Admin. Code r. 335-6-12-.35(11)(a) requires the operator to take all reasonable steps, including cessation of construction, building, production, or other activities, to prevent/minimize any violation or to prevent/minimize any adverse impact of any violation of ADEM Admin. Code chap. 335-6-12. ADEM Admin. Code r. 335-6-12-.35(11)(b) requires the operator, upon the loss or

failure of any treatment facility or BMP, to cease, suspend, reduce, or otherwise control construction or other activities as necessary until treatment is restored or effective BMPs have been repaired or installed.

10. ADEM Admin. Code r. 335-6-12-.21(5) requires the operator to ensure that effective BMPs are implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes.

11. During an inspection of the Facility on March 26, 2012, 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 rs. 335-6-12-.21(1) and 335-6-12-.21(5). Further, the Department documented that there were BMP failures, and the Operator had not ceased construction activity, in violation of ADEM Admin. Code rs. 335-6-12-.06(3), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b).

12. Pursuant to ADEM Admin. Code r. 335-6-12-.26(5), the Operator is required to inspect as necessary, and if needed, conduct sampling, during NPDES construction activity, monitoring upstream and downstream turbidity after reasonable opportunity for mixing has been afforded of all affected watercourse(s) to ensure protection of water quality.

13. Pursuant to ADEM Admin. Code r. 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.

14. During the March 26, 2012, inspection, the Department observed that stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity in a UT to Persimmon Branch, in violation of ADEM Admin. Code r. 335-6-10-.09.

15. On April 26, 2012, AO 12-102-WP was sent to the Operator by the Department as a result of the March 26, 2012, inspection. The AO notified the Operator of deficiencies documented at the Facility and required the Operator to submit notification to the Department, within twenty-four hours of receipt of the AO, that all regulated disturbance, building, construction activity, and related activity at the Facility other than BMP implementation and maintenance had ceased.

16. On May 1, 2012, the Operator submitted a response to the AO including documents noted in Paragraph 15 above. The response included a certification by a QCP that "[a]ll work at the [p]roject, The Edge [at] Troy located at 601 Elm Street, Troy, AL has ceased."

17. The AO required the Operator to submit to the Department, within ten days of receipt of the AO, a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facility deposited offsite and in State waters.

18. On May 8, 2012, the Operator submitted a response to the AO including documents noted in Paragraph 17 above. The response included a detailed plan for sediment remediation and/or removal.

19. The AO required the Operator to submit to the Department, within twenty-five days of receipt of the AO, certification by a QCP that all deficiencies at the Facility had been corrected.

20. On May 10, 2012, the Operator submitted a response to the AO including documents noted in Paragraph 19 above. The response included a certification by a QCP that the Operator had "implemented and maintained site BMPs in accordance with the Alabama Handbook" and that "the project has been brought into compliance with ADEM's Administrative Code."

21. On May 10, 2012, the Department conditionally released the Operator from the Stop-Work requirements contained in Paragraph A of the AO. The Operator was conditionally authorized to resume regulated disturbance, building, construction activity, sediment removal, and related activity at the Facility provided that the Operator ensured that effective BMPs were implemented and continually maintained at all times until completion of the project.

22. On June 7, 2012, the Operator submitted a response to the AO including documents noted in Paragraph 19 above. The response included a certification by a QCP that the Operator had removed off-site sediment accumulation in accordance with the requirements of the AO.

23. During an inspection of the Facility on July 5, 2012, 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 rs. 335-6-12-.21(1) and 335-6-12-.21(5). Further, the Department documented that there were BMP failures, and the Operator had not ceased construction, in violation of ADEM Admin. Code rs. 335-6-12-.06(3), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b).



24. During the July 5, 2012, inspection, the Department observed that stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity in a UT to Persimmon Branch, in violation of ADEM Admin. Code r. 335-6-10-.09.

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 \$24,000. The Operator contends that the noted violations caused no irreparable harm to the environment.

B. **THE STANDARD OF CARE:** In considering this factor, the Department noted that the failure to implement and/or maintain effective BMPs resulted in a violation of water quality standards for turbidity, resulting in significant sedimentation. These violations could have been avoided by continual implementation and maintenance of effective BMPs. The Operator contends that a very heavy rainfall event occurred prior to the Department's inspection. Thus, the Department enhanced the penalty by an additional \$28,000.

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 \$400.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: After receiving the Department's April 26, 2012, AO, 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. The Operator contends that a prior operator of the site contributed significantly to runoff and deteriorated water quality at the site. In light of the information submitted to the Department by the Operator regarding the removal and remediation of off-site sediment deposited, in part, by a previous operator, the Department decreased the penalty by \$27,400.

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.

H. It should be noted that this Consent Order 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.

I. The Operator neither admits nor denies the alleged violations detailed in this Consent Order. As such, this Consent Order shall not be deemed or construed at any time for any purposes by anyone (including, but not limited to, other parties who bring claims in any legal, administrative, or other proceeding) as an admission by the Operator of liability. Notwithstanding the foregoing, the Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

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 \$25,000, in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date 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, immediately upon the effective date of this Consent Order and continuing thereafter, to ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES permit limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator, except as may be provided otherwise by an ADEM-accepted compliance schedule contained in this Consent Order or any other Order executed or issued by the Department.

D. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable 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.

F. The Operator agrees to submit any application, plan, information, report, or other submittal required by this Consent Order to:

Office of Field Services
Field Operations Division
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

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

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

I. The Operator agrees, within ten days after the effective date of this Consent Order, to submit to the Department a detailed erosion and sediment control plan indicating effective BMPs to be implemented to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater leaving the Facility, and to ensure full compliance with the requirements of ADEM Admin. Code chap. 335-6-12.

J. The Operator agrees, within twenty days after the effective date of this Consent Order, to fully implement and maintain effective BMPs, implement all plans required by this Consent Order, 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. The Parties agree that this Consent Order does not preclude, negate, or otherwise affect the Operator's obligation or liability to comply with any Federal, State or local laws, regulations, or permit requirements.

T. 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.

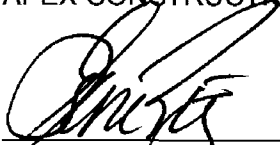
U. The Parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

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

W. 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.

APEX CONSTRUCTION SERVICES, LLC



(Signature of Authorized Representative)



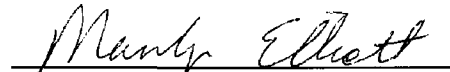
(Print Name of Authorized Representative)



Title

Date Signed: 08/27/2012

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Lance R. LeFleur, Director

Date Signed: 11/17/2012



ATTACHMENT 1 - PENALTY SYNOPSIS

[APEX CONSTRUCTION SERVICES, LLC - THE EDGE AT TROY]

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Effective Best Management Practices (BMPs) not implemented and/or maintained	2	\$9,000	\$10,500	
Discharge/accumulation of sediment offsite	2	\$15,000	\$17,500	
Totals:	4	\$24,000	\$28,000	
<p>*Refer to the "Contentions" of the Order for a description of each penalty factor.</p>				Economic Benefit*:
				\$400
				Sub-Total:
				\$52,400
				Mitigating Factors:
				\$27,400
				Ability to Pay*:
				Other Factors*:
				Final Penalty:
				\$25,000



LANCE R. LeFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

ROBERT J. BENTLEY
GOVERNOR

November 9, 2012

Michael Mullen
Choctawhatchee Riverkeeper, Inc.
PO Box 6734
Banks, AL 36005

RE: Apex Construction Services, LLC
The Edge at Troy
13-011-CLD
NPDES ALR108000
Pike County (109)

Dear Mr. Mullen:

This is in response to your comments dated Wednesday, September 26, 2012, concerning the proposed Consent Order for Apex Construction Services, LLC.

In your letter regarding this site, you expressed:

- The responsible party, or its agents, never installed erosion controls on portions of the site including a sloped, bare soil area at the southeast corner of the site.
- It appears that the responsible parties may have attested that all needed BMPs were installed and maintained per the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas (Alabama Handbook) when they were not installed.
- There were areas not in construction for more than 14 days that were never stabilized with temporary cover.
- ADEM should not reduce the penalty because there were erosion and sediment control deficiencies at the site under the previous operator.
- There simply is too little information and too little transparency in the penalty calculation, and in this particular case, ADEM should reinstate the full penalty.

Ala. Code § 22-22A-5(18), as amended, requires the Department to give consideration to the following six factors in determining the amount of any civil penalty:

1. The seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public;
2. The standard of care manifested by the alleged violator;

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)

3. The economic benefit which delayed compliance with applicable regulations may confer upon the alleged violator;
4. The nature, extent, and effectiveness of the alleged violator's efforts to minimize or mitigate the effects of the violations upon the environment;
5. The alleged violator's history of previous violations; and
6. The ability of the alleged violator to pay the proposed penalty.

In arriving at the civil penalty assessed in the proposed Consent Order, as required by Ala. Code § 22-22A-5(18), the Department thoroughly considered each of the abovementioned factors. The Department considered all available information.

The proposed Consent Order includes a list of the findings of fact that were relied upon by the Department to determine the proposed civil penalty. The public was provided the opportunity to present any additional findings of fact to the Department for consideration during the public comment period that began on Thursday, September 6, 2012.

Please be aware that the proposed Consent Order is a negotiated settlement; as such, the Department has determined the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and in the desire to resolve this matter amicably without incurring the unwarranted expense of litigation.

After reviewing your comments on the draft Order, the Department has determined that no changes to the draft Order are necessary. The Consent Order was executed on November 9, 2012. Enclosed is a copy of the final Order. Procedures for appeal of this action can be found in ADEM Admin. Code R. 335-2-1-.04 which can be found on ADEM's website at www.adem.state.al.us. Please note that Ala. Code § 22-22A-5 allows thirty days after the effective date of the Order for an appeal to be made.

To review the entire facility file or obtain copies of documents regarding information referenced in the proposed Order, please contact the Department's records manager at (334) 271-7712 to setup a time to review the facility file(s).

We trust this addresses your concerns, however, if further clarification is needed, please contact **Ryan Cooper, Office of Field Services**, by email at rcooper@adem.state.al.us or by phone at (334) 274-4205.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/rdc File:RTC/37127

Enclosure: Copy of Final Order

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order 13-011-CLD upon the person listed below by sending the same, postage paid, through the United States Mail, certified mail receipt # 91 7199 9991 7030 3344 0064, with instructions to forward and return receipt, to:

APEX Construction Services, LLC
9057 Manchester Highway
Morrison, TN 37357

DONE this 9th day of November, 2012.



Steven O. Jenkins
Chief, Field Operations Division
Alabama Department of Environmental Management

English

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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
9171999991703033440064		Delivered	November 19, 2012, 11:59 am	MORRISON, TN 37357	Certified Mail™ Return Receipt Electronic
		Arrival at Unit	November 17, 2012, 6:54 am	MORRISON, TN 37357	

Check on Another Item

What's your label (or receipt) number?



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Date: 11/20/2012

VALERIE JACKSON:

The following is in response to your 11/20/2012 request for delivery information on your Certified Mail(TM) item number 7199 9991 7030 3344 0064. The delivery record shows that this item was delivered on 11/19/2012 at 11:59 AM in MORRISON, TN 37357. The scanned image of the recipient information is provided below.

Signature of Recipient:

A scanned image of a signature, "John Williams", written in black ink on a white background. The signature is enclosed in a rectangular box with a thin black border. To the left of the box, there are small, faint markings that appear to be "LRE" and "ad".

Address of Recipient:

A scanned image of a handwritten address, "9057 MANCHESTER Hwy", written in black ink on a white background. The address is enclosed in a rectangular box with a thin black border. To the left of the box, there are small, faint markings that appear to be "ny" and "ss".

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service