

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management

adem.alabama.gov

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(334) 271-7700

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BOB RILEY
GOVERNOR

August 17, 2007

CERTIFIED MAIL

7005 1820 0003 1876 8538

JEFF JANEWAY

APAC-SOUTHEAST INC ALABAMA DIVISION

PO BOX 818

BIRMINGHAM AL 35201



RE: CONSENT ORDER 07-157-CMNPS
Birmingham Airport Runway Extension
Jefferson County (073)
NPDES ALR167147
Off of 65th Street, Birmingham, AL

Dear Mr. Janeway:

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 **Josh Therrien, Birmingham Branch**, by email at jtherrien@adem.state.al.us or by phone at (205) 942-6168.

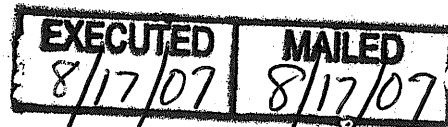
Sincerely,

Steven O. Jenkins, Chief
Field Operations Division

soj/deh

File:ECO/27247

c: Water Management Division, EPA Region IV
Office of Public Affairs, ADEM



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

APAC-SOUTHEAST, INC., ALABAMA DIVISION
BIRMINGHAM AIRPORT RUNWAY EXTENSION
BIRMINGHAM, T17S, R3W, S9 & S10
JEFFERSON COUNTY, ALABAMA
NPDES ALR167147

CONSENT ORDER
07-157-CMNPS

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and APAC-Southeast, Inc., Alabama Division (hereinafter "APAC," or the "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. APAC is a Georgia corporation authorized to do business in Alabama that was constructing the industrial construction of the Facility located in T17S, R3W, S9 and T17S, R3W, S10 in Birmingham, Jefferson County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility had the potential to discharge and/or have discharged to the Village Creek, a water of the State, classified for Limited Warmwater Fishery.

2. The following 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
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PE	Professional Engineer licensed to practice in the State of Alabama
QCI	ADEM-recognized Qualified Credentialed Inspector
QCP	ADEM-recognized Qualified Credentialed Professional
WL	Warning Letter

3. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

4. 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 NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

5. On March 30, 2005, APAC submitted to the Department an NOR requesting NPDES coverage under ADEM Admin. Code ch. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration ALR167147 to APAC on March 30, 2005. Registration ALR167147 was scheduled to expire on March 29, 2006.

6. On January 30, 2006, a NOR requesting transfer of ALR167147 was submitted to the Department by Dunn Construction Company, Inc. The Department granted transfer of ALR167147 effective January 30, 2006.

7. Pursuant to ADEM Admin. Code r. 335-6-12-.05(2), all NPDES construction sites/activities and noncoal mining sites/activities less than five acres in size in Alabama are required to fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the Operator's CBMPP that has been prepared by a PE or QCP.

8. During an inspection of the Facility on December 28, 2005, the Department documented that APAC had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to Village Creek.

9. A WL dated January 5, 2006, was sent to APAC by the Department as a result of the December 28, 2005, inspection of Facility. The WL notified APAC of deficiencies documented at the Facility. The January 5, 2006, WL requested APAC to submit to the Department certification by a QCP that all deficiencies at the Facility had been corrected within thirty days of receipt of the WL. The Department has not received the requested certification

10. As described in the preceding paragraphs and at other times unknown to the Department, APAC may have failed or failed to take adequate measures to ensure compliance with all requirements of AWPCA and/or ADEM Admin. Code ch.. 335-6-12.

11. APAC neither admits nor denies the alleged violations detailed in this 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 APAC 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.

12. The Department neither admits nor denies APAC's contentions. 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

13. APAC contends that the WL dated January 5, 2006 was received by APAC on January 31, 2006, after the effective date of the transfer to Dunn. APAC certifies and represents that actions were taken following the inspection to correct deficiencies.

14 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 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 be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by

the Department shall not exceed \$250,000. 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:** Excessive sediment and/or other pollutants were allowed to be discharged from the Facility by the Operator. The Operator did not ensure that effective BMPs were fully implemented and maintained, resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. There is no evidence that the noted violations caused irreparable harm to the environment. There is no evidence that the noted violations were a threat to the health or safety of the public.

B. **THE STANDARD OF CARE:** The Operator did not implement and fully maintain effective BMPs at the Facility. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements and delayed response to the noted violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Operator took insufficient action to minimize or mitigate the effects of the noted violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator does not have a history of previous violations.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: 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.

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, and 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 \$15,000 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 registration 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 approved 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 PE, a QCP, a qualified person under the direct supervision of a PE/QCP, or by a QCI;

2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of, and shall be certified by, a PE/QCP;
3. all applications, plans, and information shall be certified by a PE/QCP;
4. all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a PE/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 PE, QCP, or QCI designation, how the inspection/work was conducted, and the results of the inspection/work.

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

F. The Operator agrees, if requested by the Department, to submit within 30 days of receipt of the request to the Department a detailed plan for the remediation and/or removal, if required, of any sediment and other pollutants from the Facility deposited offsite and in State waters.

G. The Operator agrees, within twenty days after acceptance of the plan in Paragraph F above, to correct all deficiencies at the Facility, offsite conveyances, and

affected State waters, including sediment removal/remediation, if required, in a manner acceptable to the Department.

H. The Operator agrees, within twenty-five days after acceptance of the plan in Paragraph F above, to submit to the Department a certification that all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin. Code ch. 335-6-12 has been achieved at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation, if required, in a manner acceptable to the Department.

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 all violations of the AWPCA and/or ADEM Admin. Code ch. 335-6-12 at the Facility up through the effective date of this Consent Order, including but not limited to those 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 Department and the Operator 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 Department and the Operator 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 hereby waives any hearing on the terms and conditions of same.

O. The Department and the Operator 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 Department and the Operator 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 Department and the Operator 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 Department and the Operator agree that any modifications of this Consent Order must be agreed to in writing and signed by all affected parties.

S. The Department and the Operator 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.

APAC-SOUTHEAST, INC., ALABAMA DIVISION


ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

JEFFERY LEE JANEWAY
(Print Name of Authorized Representative)

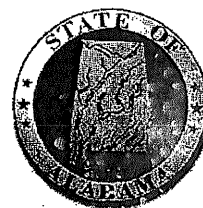
Vice President
Title

Date Signed: 5/24/07


Onis "Trey" Glenn, III
Director

Date Signed: 8/17/07

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301463 36130-1463 ♦ 1400 COLISEUM BLVD. 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

ONIS "TREY" GLENN III
DIRECTOR

BOB RILEY
GOVERNOR

Facsimiles: (334)

Administration: 271-7950
General Counsel: 394-4332
Communication: 394-4383
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

ADEM WORKSHEET FOR NPDES CONSTRUCTION STORMWATER PENALTY ORDERS

The Environmental Management Act, Code of Alabama(1975), 22-22A-5 states:

" Any civil penalty assessed or recovered under paragraph a. or b. of this subdivision shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department under paragraph a. of this subdivision shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation for purposes of this subdivision. In determining the amount of any penalty, consideration shall be given 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. ..."

Facility Name: APAC-Southeast, Inc., Alabama Division – Birmingham Airport Runway Extension

NPDES #: ALR167147

ADEM Consent Order: 07-157-CMNPS

Location: off 65th Street North, in Birmingham, Jefferson County, Alabama

Type of Violation	Past Order Penalty Range (Dollars)	Statutory Range (Dollars)
Reporting	100-1,000	100- 25,000
Records	100-1,000	100-25,000
CBMPP, SPCC, Other Required Plans	100-1,500	100- 25,000
Monitoring	100-1,000	100- 25,000
Operator QCP/QCI Inspections	100-1,000	100- 25,000
Permit Coverage	100-10,000	100- 25,000
Noncompliant Discharge	100-1,500	100- 25,000
Inadequate/No Response	100-25,000	100- 25,000
BMP	100-5,000	100- 25,000
Implementation/Maintenance/Effectiveness		
Sediment Deposition Offsite	100-10,000	100- 25,000
Water Quality Standards	100- 25,000	100- 25,000
Order Requirement	100-5,000	100- 25,000

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110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
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(251) 479-2593 [Fax]

Mobile – Coastal
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Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]

VIOLATION FACTS: Refer to the *Stipulations* and *Contentions* sections of the above referenced ADEM Consent Order

FACTORS CONSIDERED IN ESTABLISHING THE PENALTY AMOUNT:

- **SERIOUSNESS OF THE VIOLATION:** Excessive sediment and/or other pollutants were allowed to be discharged from the Facility by the Operator. The Operator did not ensure that effective BMPs were fully implemented and maintained, resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. There is no evidence that the noted violations caused irreparable harm to the environment. There is no evidence that the noted violations were a threat to the health or safety of the public.
- **THE STANDARD OF CARE:** The Operator did not implement and fully maintain effective BMPs at the Facility. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.
- **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements and delayed response to the noted violations.
- **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Operator took insufficient action to minimize or mitigate the effects of the noted violations upon the environment.
- **HISTORY OF PREVIOUS VIOLATIONS:** The Operator does not have a history of previous violations.
- **THE ABILITY TO PAY:** The Operator has not alleged an inability to pay the civil penalty.

PENALTY AMOUNT: \$15,000

OPERATIONAL REQUIREMENTS: Refer to the *Order* section of the above referenced ADEM Consent Order

File:ECO/27247