

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )

WRIGHT BROTHERS CONSTRUCTION CO., INC. )

EASTWOOD FESTIVAL CENTRE )

JEFFERSON COUNTY )

ORDER NO. 89-029-WP

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§22-22A-1 through 22-22A-16 (1984 and 1988 Cum. Supp.), the Alabama Water Pollution Control Act., Code of Alabama 1975 §§22-22-1 through 22-22-14 (1984 and 1988 Cum. Supp.), and the National Pollutant Discharge Elimination System administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act §402, 22 U.S.C., §1342, the Department makes the following FINDINGS OF FACT:

1. Wright Brothers Construction Co. Inc., (hereinafter "the Operator"), is the construction site grading contractor at the Eastwood Festival Centre (hereinafter "the site") located in Township 17 South, Range 2 West, Section 27 in Jefferson County, Alabama, and as such is responsible for site preparation, surface grading and stormwater run-off control.

2. Code of Alabama 1975, §22-22-9(i)(3) (1988 Cum. Supp.) provides that "[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the [Department] in

ISSUED 1/6/89	SERVED 1/9/89
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writing for a permit and must obtain such permit before discharging such pollution". ADEM Admin. Code 6-6-.03 provides that "[n]o person shall discharge pollutants from a point source into waters without first having obtained a valid NPDES [National Pollutant Discharge Elimination System] permit....."

3. The Operator has neither applied for nor obtained a permit to discharge pollutants.

4. On April 11, 1988, an inspection by Department staff revealed discharges of sediment, pollutants and other wastes from the construction site to two unnamed tributaries of Shades Creek, waters of the State. A sample of the discharges, stream samples and discharges of stormwater not associated with the project were taken and indicated the following results:

<u>Description</u>	<u>pH (s.u.)</u>	<u>Turbidity (N.T.U.)</u>	<u>TSS (mg/l)</u>
Discharge #1	6.6	1,000.00	3,968.0
Discharge #2	5.8	650.0	343.0
U.T. before mix at culverts	5.4	240.0	526.0
Large culvert from existing subdivision	5.6	6.0	18.0
Small culvert from existing subdivision	5.9	10.0	107.0
U.T. after mix at culverts	6.6	150.0	178.0
U.T. before mix at Shades Creek	5.8	500.0	125.0
Shades Creek before mix	5.7	29.0	56.0
Shades Creek after mix	5.6	35.0	93.0

5. On the dates listed below, sediment, pollutants or other wastes were discharged from the construction site to two unnamed tributaries of Shades Creek. Samples of the discharges taken by representatives of the Operator indicated the following results:

<u>Date</u>	<u>Site</u>	<u>pH (s.u.)</u>	<u>TSS (mg/l)</u>	<u>Turbidity (N.T.U.)</u>
5/16/88	D #1	No Flow	---	---
	D #2	No Flow	---	---
	D #3	7.4	62	60
5/23/88	D #1	7.4	512	270
	D #2	7.2	42	30
	D #3	7.1	48	90
5/24/88	D #1	7.6	163	260
	D #2	7.5	66	32
	D #3	7.2	54	95
5/25/88	D #1	7.0	13	6.2
	D #2	7.0	27	86
	D #3	6.9	58	66

No Data Reported For June 1988

7/12/88	D #1	7.2	333	300
	D #2	No Flow	---	---
	D #3	No Flow	---	---
7/21/88	D #1	7.1	2824	2200
	D #2	6.8	2544	6000
	D #3	No Flow	---	---
8/3/88	D #1	7.4	110	155
	D #2	No Flow	---	---
	D #3	7.1	56	250
8/21/88	D #1	7.1	1596	2200
0800	D #2	No Flow	---	---
	D #3	No Flow	---	---
8/21/88	D #1	6.5	23800	48200
1730	D #2	6.8	7127	7300
	D #3	5.8	4710	17300
8/24/88	D #1	6.7	857	5300
	D #2	No Flow	---	---
	D #3	No Flow	---	---

D = Discharge

6. On or about April 27, 1988, the Operator received a notice of these violation issued by the Department on April 26, 1988, which required that certain actions be taken concerning the discharge of sediment, pollutants and other wastes from the site. This Notice of Violation required that within 14 days of receipt of the Notice the Operator must:

- A. Submit an engineering plan and proposed implementation schedule for said plan for cleanout/maintenance of all existing sediment and stormwater control structures (retention/detention ponds, silt fences, etc.) and for construction and installation of all necessary pollution control structures needed to prevent any discharge of wastewater which causes a contravention of state water quality criteria set forth in ADEM Admin. Code 6-10.
- B. Submit an engineering plan and a proposed schedule of implementation for said plan for auxiliary control structures or procedures to control wastewater discharges.
- C. Submit an engineering plan and a proposed implementation schedule for said plan for removal of all sediment and debris deposited downstream of discharge points.
- D. Immediately begin monitoring all discharges from the construction site and in the stream course at a point prior to mixing and point after mixing with discharges from the above referenced construction project and submit monitoring data within 7 working days of each monitored storm event. Samples collected were to be monitored for pH, Total Suspended Solids (TSS) and Turbidity.

E. Submit on a weekly basis a daily record of all precipitation, recorded in inches, at the site as recorded onsite or as reported by the local weather service.

F. Submit, on a weekly basis, a daily inspection report for all onsite pollution control structures. This report should detail all deficiencies noted and measures to correct said deficiencies for all basins, silt fences, etc.

7. The required submission date for the information identified in Section 6 above was on or about May 12, 1988. On or about May 3, 1988 the operator verbally requested an extension and the Department verbally extended the submission date to May 31, 1988, for all of the information required in Section 6 above. As of May 31, 1988, none of the required information had been submitted by the Operator. A written request from the Operator for another extension of submission requirements, as specified in Section 6 above, until July 1, 1988, was received by the Department on June 21, 1988. As of July 5, 1988, none of the required information, as specified in Section 6 above, had been submitted by the Operator.

8. The letter from the Operator dated June 17, 1988, received by the Department on June 21, 1988, stated that the Operator was the site grading contractor for the site and that the Operator was making efforts on their behalf and on the behalf of the owners and developers of the site to take all measures required to bring the discharges of rainfall runoff into full compliance with the requirements of the Department.

9. On July 8, 1988, the Operator received a second Notice of Violation issued by the Department on July 5, 1988, which required that all information required in the Notice of Violation dated April 26, 1988, be submitted to the Department by July 15, 1988.

10. On July 14, 1988, the Operator submitted a letter to the Department stating that a consultant had been retained by the Operator to prepare the engineering reports required by the Department; that almost all permanent storm basins and a number of erosion controls were installed; and that the Operator had the situation well in hand. Precipitation and discharge sampling results which documented additional unpermitted discharges of pollutants to waters of the State of Alabama were included with the letter.

11. On July 28 & 29, 1988, the Department received additional sample results from the Operator which show that unpermitted discharges continued to occur during rainfall events.

12. As of August 22, 1988, the Operator had not submitted any of the information and data required in Items A, B, C and F in Section 6 above.

13. Untimely reports in response to the requirements in Items D and E, with incomplete and inadequate data were received by the Department on July 14, 1988, July 28, 1988, July 29, 1988 and August 17, 1988.

14. The Operator has realized an economic benefit from its failure to comply with the provisions of the Alabama Water Pollution Control Act and its implementing regulations.

15. Although the Operator has made some efforts to mitigate the effects of the above-cited violations upon the environment, those efforts have been inadequate and, in some cases, untimely.

16. The Operator has been cited for violations of the Alabama Water Pollution Control Act at this location, has failed to respond in a timely manner and has failed to submit all information required by

two Notices of Violations. The Operator has also been cited for violations of the Solid Waste Disposal Act as a result of its activities at this location.

17. The Operator has the ability to pay an administrative penalty.

18. The Operator's failure to take the necessary steps to prevent the violations cited herein from occurring was knowing and intentional and was committed without regard for the consequences thereof or alternatives thereto.

#### ORDER

Based upon the foregoing FINDING OF FACTS and pursuant to Code of Alabama 1975, §§22-22A-(10), 22-22A-5(18), 22-22-9(c), 22-22-9(i) and 22-22-9(k) (1988 Cum. Supp.) and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under the Federal Water Pollution Control Act., § 402, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That within 14 days of receipt of notice of this Order the Operator shall cease all unpermitted discharges from the site.

B. That not later than February 1, 1989, the Operator shall submit to the Department a proposed implementation schedule for the engineering plan which was submitted to the Department on September 22, 1988, and updated November 3, 1988.

C. That not later than February 1, 1989, the Operator shall submit to the Department a 1 inch to 200 foot scale map which clearly shows the site grading with drainage patterns indicated and location of all erosion control measures and detailed design plans for each measure.

D. That not later than February 1, 1989, the Operator shall submit to the Department a detailed, proposed implementation schedule to be approved by the Department for the preliminary engineering plan submitted to the Department by the Operator on December 1, 1988, for removal of all sediment and debris deposited below the operation or into any unnamed tributaries of Shades Creek or other waters of the State.

E. That immediately upon receipt of notice of this Order the Operator shall monitor on a daily basis all of its discharges from the above referenced construction project and in the stream course (waters of the State) at a point prior to mixing and point after mixing with discharges from the above referenced construction project at locations proposed by the Operator and approved by the Department and submit monitoring data within 30 days after sample collection. Each sample collected shall be analyzed for pH, Total Suspended Solids (TSS), Turbidity and Total Iron.

F. Upon receipt of this Order the Operator is required to submit to the Department on a weekly basis a daily inspection report for all onsite pollution control structures. This report should detail all deficiencies noted and measures to correct said deficiencies for all basins, silt fences, etc.. This report shall include:

1. the date and time any treatment or control facilities or systems were inspected by the Operator;
2. whether there was a discharge from the site at the time of inspection by the Operator;
3. whether samples of the discharges from the site were collected at the time of inspection by the Operator;



4. whether all associated treatment or control facilities or systems appeared to be in good working order and operating as efficiently as possible, and if not, a description of the problems or deficiencies;
5. the name and signature of the person performing the inspection of the treatment or control facilities or systems.

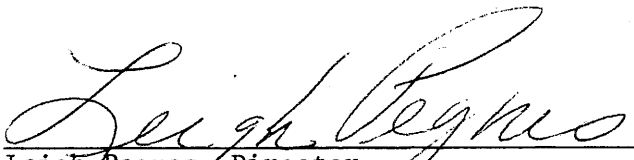
Each daily inspection report shall be signed and dated by an officer(s) having the authority and responsibility to prevent and abate violations of the Alabama Water Pollution Control Act.

G. That within 30 days of receipt of this Order, the Operator shall pay to the Department the sum of Twenty One Thousand U.S. Dollars (\$21,000.00).

H. That the failure of the Operator to comply with any of the provisions of this Order shall constitute cause for the commencement of legal action for the recovery of civil penalties, criminal fines or other appropriate relief.

I. That issuance of this Order does not preclude the Department or others from seeking criminal fines or other appropriate sanctions or relief against the Operator for the violations stated herein.

DONE and ISSUED this 6<sup>th</sup> day of January, 1989.

  
Leigh Pegues, Director  
Alabama Department of Environmental  
Management  
1751 Cong. W. L. Dickinson Drive  
Montgomery, Alabama 36130  
(205) 271-7700

CERTIFICATE OF SERVICE

I, Olivia H. Jenkins, hereby certify that I have served Order No. 89-029-WP upon Wright Brothers Construction Company by sending the same, postage paid, through the U.S. Mail, as Certified Mail No. P 966 410 269, with instructions to forward and return receipt requested to:

The Corporation Company  
Registered Agent for  
Wright Brothers Construction Company  
60 Commerce Street  
Montgomery, Alabama 36103

Done this 6<sup>th</sup> day of January, 1989.

  
\_\_\_\_\_  
Olivia H. Jenkins

P 966 410 269

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

Sent to <b>The Corporation</b>	
Street and No. Registered Agent <b>60 Commerce St.</b>	
P.O., State and ZIP Code <b>Montgomery, AL 36103</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date <i>PO Wright Bros. Constr. 89-0 29-UP</i>	

PS Form 3800, June 1985

P 966 410 270

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

Sent to <b>Tom Whitsitt, Pres.</b>	
Street and No. <b>Wright Bros. Constr., Inc.</b>	
P.O., State and ZIP Code <b>Rt. 1, Charleston, TN 37130</b>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, June 1985

PS Form 3811, Feb. 1986

<p><b>SENDER:</b> Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery.</p>		<p>4. Article Number P 966 410 269</p> <p>Type of Service: <input checked="" type="checkbox"/> Registered Certified <input type="checkbox"/> Insured COD <input type="checkbox"/> Express Mail</p> <p>Always obtain signature of addressee or agent and <b>DATE DELIVERED.</b></p> <p>8. Addressee's Address (ONLY if requested and fee paid)</p>	
<p>3. Article Addressed to: <b>The Corporation Company 60 Commerce Street Montgomery, AL 36103</b></p>		<p>5. Signature - Addressee <i>PO-1/6/89</i></p>	
<p>6. Signature - Agent <i>[Signature]</i></p>		<p>7. Date of Delivery <b>JAN 9 1989</b></p>	

DOMESTIC RETURN RECEIPT

PS Form 3811, Feb. 1986

<p><b>SENDER:</b> Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery.</p>		<p>4. Article Number P 966 410 270</p> <p>Type of Service: <input checked="" type="checkbox"/> Registered Certified <input type="checkbox"/> Insured COD <input type="checkbox"/> Express Mail</p> <p>Always obtain signature of addressee or agent and <b>DATE DELIVERED.</b></p> <p>8. Addressee's Address (ONLY if requested and fee paid)</p>	
<p>3. Article Addressed to: <b>Thomas Whitsitt, Pres. Wright Brothers Construction, Inc. Route 1 Charleston, TN 37130</b></p>		<p>5. Signature - Addressee <i>PO-1/6/89</i></p>	
<p>6. Signature - Agent <i>[Signature]</i></p>		<p>7. Date of Delivery</p>	

DOMESTIC RETURN RECEIPT