

ONIS "TREY" GLENN, III
DIRECTOR



BOB RILEY
GOVERNOR

Alabama Department of Environmental Management
1400 Coliseum Blvd. 36102-0933 Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
FAX (334) 271-7950

January 24, 2008

CERTIFIED MAIL
7005 1820 0003 1880 9996

BOB PICKNEY
PICKNEY BROS INC
7638 RIVER ROAD PIKE
NASHVILLE TN 37209

RE: CONSENT ORDER 08-082-CMNPS
Pine Forest Treatment Facility
Montgomery County (101)
NPDES Registration ALR16C119
13988 US-80, Pike Road, AL 36064 adjacent to Line Creek



Dear Mr. Pickney:

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 Clay James, Mining Unit, Mining & Nonpoint Source Section, by email at cjames@adem.state.al.us or by phone at (334) 394-4323.

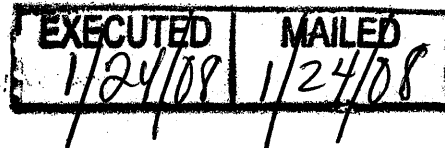
Sincerely,

Steven O. Jenkins, Chief
Field Operations Division

soj/ccj File:ECO/32620

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)

PICKNEY BROS INC)
PINE FOREST TREATMENT FACILITY)
WAUGH, T16N, R20E, S13,)
MONTGOMERY COUNTY, ALABAMA)
NPDES ALR16C119)
_____)

CONSENT ORDER 08-082-CMNPS

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Pickney Bros., Inc. (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 corporation which is constructing the Pine Forest Treatment Facility, a waste water treatment plant (hereinafter "Facility") located in T16N, R20E, S13, in Waugh, south of Interstate 85 and east of Montgomery, Montgomery County, Alabama.

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

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

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. On January 5, 2007, the Operator was granted Registration ALR16C119 by the Department for regulated disturbance activities and discharges of treated stormwater from the Facility. Registration ALR16C119 is scheduled to expire on January 4, 2008.

5. 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.

6. Pursuant to ADEM Admin. Code r. 335-6-12-.08, discharges from instream and within-bank mining are not authorized by Registration ALR16C119.

7. During an inspection of the Facility on May 15, 2007, the Department documented that the Operator had conducted unpermitted mining at a site connected/adjacent to the Facility within the banks of Line Creek at T16N, R20E, S12,13, to obtain construction material for the Facility, and also had not properly implemented and maintained effective BMPs resulting in unpermitted discharges of sediment directly into Line Creek, a water of the State, classified for Fish and Wildlife.

8. Analyses of water samples collected from Line Creek during the May 15, 2007, inspection indicated a discharge of 353.0 NTUs, an upstream turbidity of 19.3 NTUs, and, approximately 25 feet downstream, a turbidity of 82.6 NTUs, resulting in an increase of 63.3 NTUs. In addition, discharges from the unpermitted within-bank mining site were causing substantial visible contrast in instream turbidity in the immediate area downstream of the Facility. Approximately fifty feet down stream of the area a turbidity reading of 31.4 was recorded, which is considerably below the standard of 50 NTUs.

9. The Operator neither admits or denies these stipulations; however, consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

10. 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

11. 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: The Department contends that excessive sediment was allowed to be discharged from the unpermitted within-bank mining site directly connected/associated with the Facility by the Operator. The Department further contends that 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. The noted violations did not appear to cause 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 Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation and no excessive sediment was discharged, as evidenced by the department's turbidity test a few feet below the site. The operator further asserts that personnel within ADEM were notified and that these personnel did not indicate the proposed activity required ADEM approval. The Department contends that, by letter of January 9, 2007, the Operator was informed by the Department as to what regulations are applicable to the Facility and should have known in-stream mining is prohibited. The Department further contends that the Operator should have directed any

questions regarding disturbance of earth in-stream to the appropriate personnel in the construction stormwater program but failed to do so until after the prohibited activities occurred.

B. THE STANDARD OF CARE: The Department contends that the Operator did not implement and fully maintain effective BMPs at the Facility and that the Operator did not exhibit a standard of care commensurate with applicable regulatory requirements. The Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation.

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. The Operator contends that it received no economic benefit as a result of the violations cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department notes that the Operator took immediate action to minimize or mitigate to the extent practicable the effects of the noted violations upon the environment after notification from the Department. The noted violations appeared to cause little or no permanent effect on the environment. In addition, the Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation.

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 \$9,000 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 QCP;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of, 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 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, within five days after the effective date of this Consent Order, to have a comprehensive inspection performed of the Facility, associated areas, affected watercourses, and affected State waters.

G. The Operator agrees, within ten days after the effective date of this Consent Order, to submit to the Department plans, including a schedule to accomplish corrective actions and/or improvements identified by the comprehensive inspections of the Facility to ensure full compliance with the requirements of the Registration and ADEM rules.

H. The Operator agrees, within fifteen days after the effective date of this Consent Order, to implement effective BMPs, implement any plans required in this Consent Order, and correct all deficiencies at the Facility, associated areas, 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 plan for the remediation and/or removal of any sediment and other pollutants from the Facility and associated areas deposited offsite and in State waters.

J. The Operator agrees, within fifteen days after the effective date of this Consent Order, to submit to the Department certification that all deficiencies identified by the comprehensive inspections have been corrected, and full compliance with the requirements of the NPDES rules and Registration has been achieved, except for any corrective actions that must be authorized by modification of the Registration.

K. The Operator agrees, within twenty days after the effective date of this Consent Order, to submit to the Department a written report detailing the results of comprehensive inspections of all other ADEM NPDES regulated facilities/sites owned, operated, controlled, registered, permitted or required to be registered/permitted by the Operator (hereinafter "Sites"), offsite conveyances, and affected State waters.

L. The Operator agrees, within twenty days after the effective date of this Consent Order, to submit to the Department complete registrations for any Sites requiring NPDES coverage or modified registrations for Sites needing updated/modified NPDES coverage, including the required fee, and a detailed plan, if needed, for implementation and maintenance of effective BMPs and correction of any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

M. The Operator agrees, within thirty days after the effective date of this Consent Order, if needed, to implement effective BMPs and correct any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

N. The Operator agrees, within thirty days after the effective date of this Consent Order, to submit to the Department a certification for each of the Sites subject to this Consent Order that effective BMPs have been implemented, any deficiencies have been corrected, a complete registration has been submitted to the Department for any Sites requiring NPDES coverage, and that full compliance with the requirements of ADEM Admin. Code ch. 335-6-12 has been achieved at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. 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 does hereby waive any hearing on the terms and conditions of same.

U. 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.

V. 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.

W. 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.

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

Y. 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.

PICKNEY BROS., INC.

Trey Glenn

(Signature of Authorized Representative)

Glenn Marcom

(Print Name of Authorized Representative)

Vice-President

Title

Date Signed: *10/23/07*

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Nancy Elliott

Onis "Trey" Glenn, III
Director

Date Signed: *1/24/08*

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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MONTGOMERY, ALABAMA

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ONIS "TREY" GLENN III
DIRECTOR



BOB RILEY
GOVERNOR

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Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

ADEM WORKSHEET FOR NPDES MINING 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: Pickney Bros., Inc. – Pine Forest Treatment Facility

NPDES #: ALR16C119

ADEM Consent Order: 08-082-CMNPS

Location: north of State Highway 80 on Line Creek, near Waugh, Montgomery 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
PAP, SPCC, Other Required Plans	100-1,500	100- 25,000
Monitoring	100-1,000	100- 25,000
Permit Coverage	100-15,000	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	100-10,000	100- 25,000
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

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

Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

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2715 Sandlin Road, S.W.
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(251) 479-2593 [Fax]

Mobile – Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]

FACTORS CONSIDERED IN ESTABLISHING THE PENALTY AMOUNT:

- **SERIOUSNESS OF THE VIOLATION:** The Department contends that excessive sediment was allowed to be discharged from the unpermitted within-bank mining site directly connected/associated with the Facility by the Operator. The Department further contends that 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. The noted violations did not appear to cause 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 Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation and no excessive sediment was discharged, as evidenced by the department's turbidity test a few feet below the site. The operator further asserts that personnel within ADEM were notified and that these personnel did not indicate the proposed activity required ADEM approval. The Department contends that, by letter of January 9, 2007, the Operator was informed by the Department as to what regulations are applicable to the Facility and should have known in-stream mining is prohibited. The Department further contends that the Operator should have directed any questions regarding disturbance of earth in-stream to the appropriate personnel in the construction stormwater program but failed to do so until after the prohibited activities occurred.
- **THE STANDARD OF CARE:** The Department contends that the Operator did not implement and fully maintain effective BMPs at the Facility and that the Operator did not exhibit a standard of care commensurate with applicable regulatory requirements. The Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation.
- **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. The Operator contends that it received no economic benefit as a result of the violations cited herein.
- **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department notes that the Operator took immediate action to minimize or mitigate to the extent practicable the effects of the noted violations upon the environment after notification from the Department. The noted violations appeared to cause little or no permanent effect on the environment. In addition, the Operator contends that it never conducted in-stream mining activities. The Operator further contends that it used proper BMPs in its operation.
- **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: \$9,000

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

File:ECO/32620