

ONIS "TREY" GLENN, III  
DIRECTOR



Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

BOB RILEY  
GOVERNOR

September 5, 2008

CERTIFIED MAIL  
7005 3110 0000 9536 0981

STEVE WILLIAMS  
SDW, INC.  
PO BOX 71002  
TUSCALOOSA, AL 35407

RE: ADMINISTRATIVE ORDER 08-203-MNPS  
Williamsburg  
Tuscaloosa County (125)  
NPDES ALR165846  
Off Buttermilk Road Cottondale, AL

Dear Mr. Williams:

Enclosed please find the above-referenced Administrative Order which requires certain actions to be taken regarding violations of applicable environmental laws and regulations. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of the operator/owner.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1) this Order may be appealed by filing a request for hearing before the Environmental Management Commission within thirty (30) days after receiving this Order. The request should be addressed to the Chair of the Environmental Management Commission and should comply with the requirements of ADEM Admin. Code R. 335-2-1-.04. Copies of ADEM Admin. Code, Div. 2, Environmental Management Commission regulations can be viewed or downloaded from ADEM's WebPage at <http://www.adem.state.al.us/Regulations/regulations.htm> or may be obtained by submitting a request in writing to the ADEM Permits & Services Division.

Should you have any questions concerning this matter, please contact **Janna McIndoe, Birmingham Branch, by email at [jmmcindoe@adem.state.al.us](mailto:jmmcindoe@adem.state.al.us) or by phone at (205) 942-6168.**

Sincerely,

Steven O. Jenkins, Chief  
Field Operations Division

soj/deh File:EUO/25267  
c: Water Management Division  
Enclosure: Copy of Final Order

EPA Region IV

Office of Public Affairs, ADEM

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

SDW, INC.

WILLIAMSBURG

COTTONDALE, T22S, R9W, S11

TUSCALOOSA COUNTY, ALABAMA

NPDES ALR165846

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) ORDER 08-203-MNPS  
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FINDINGS

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.), the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department makes the following FINDINGS:

1. SDW, Inc. (hereinafter "Operator") is an Alabama corporation which is constructing the residential subdivision, Williamsburg (hereinafter "Facility") located in T22S, R9W, S11 in Cottondale, Tuscaloosa County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Cottondale Creek, a water of the State, classified for Fish & Wildlife.

2. The following acronyms are used in this 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
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. 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 a NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

5. On August 16, 2004, the Operator submitted to the Department a NOR requesting NPDES coverage under ADEM Admin. Code chap. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration ALR165846 to the Operator on September 1, 2004. Registration ALR165846 expired on August 31, 2005.

6. On August 4, 2005, the Operator submitted to the Department a NOR requesting re-registration of NPDES coverage ALR165846. The Department granted re-registration of ALR165846 to the Operator on August 4, 2005. Registration ALR165846 expired on August 31, 2006.

7. On January 31, 2007, the Operator submitted to the Department a NOR requesting re-registration of NPDES coverage ALR165846. The NOR was incomplete, and the Operator was notified of the deficiencies by letter on March 13, 2007. On January 28, 2008, the requested information to complete the NOR was submitted by

the Operator. The Department granted re-registration of ALR165846 to the Operator on January 28, 2008. Registration ALR165846 is scheduled to expire on August 31, 2008.

8. 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 QCP.

9. During inspections of the Facility on May 25, 2006, and December 18, 2007, the Department documented that the Operator had not properly implemented and maintained effective BMPs.

10. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

11. During the May 25, 2006 inspection by the Department, significant accumulations of sediment resulting from discharges at the Facility were observed offsite.

12. As a result of the May 25, 2006 inspection, the Department sent the Operator a NOV dated July 6, 2006. The NOV notified the Operator of deficiencies documented at the Facility and requested the Operator to submit to the Department, within fourteen days of receipt of the NOV, a report detailing the corrective actions that would be taken. The NOV also requested the Operator to submit to the Department,



within twenty-one days of receipt of the NOV, a certification by a QCP that all deficiencies at the Facility had been corrected. As of May 16, 2008, the requested certification had not been submitted to the Department.

13. As a result of the December 18, 2007 inspection, the Department sent the Operator a NOV dated January 18, 2008. The NOV notified the Operator of deficiencies documented at the Facility and requested the Operator to re-register for NPDES coverage within seven days of receipt of the NOV. The NOV also requested the Operator to submit to the Department certification by a QCP that all deficiencies at the Facility had been corrected within fifteen days of receipt of the NOV. As of May 16, 2008, the requested information had not been submitted to the Department.

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:** The Operator's discharges between September 1, 2006 and January 27, 2008 were not authorized by NPDES registration coverage. Excessive sediment was 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 failed to keep the Operator's registration coverage current. 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 little or no action to minimize or mitigate



the effects of the noted violations upon the environment until required to do so by the Department.

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: Generally the violations fell into three broad categories of: 1) inadequate BMP implementation/maintenance/effectiveness; 2) inadequate response; and 3) sediment accumulation/deposition offsite. These categories have historically resulted in penalty assessments in the following ranges: 1) \$100 to \$5,000 per day, 2) \$100 to \$25,000 per day, and 3) \$100 to \$10,000 per day, respectively.

#### ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, within forty-five days of receipt of this Order, the Operator shall pay to the Department a civil penalty in the amount of \$20,000 for the violations cited herein. Said penalty 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

B. That, immediately upon receipt of this Order and continuing thereafter, the Operator shall fully implement and maintain temporary BMPs to prevent/minimize, to

the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility, prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State, and ensure full compliance with the requirements of ADEM Admin. Code chap. 335-6-12.

C. That the Operator shall, immediately upon receipt of this Order and continuing thereafter, 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.

D. That, unless relieved of this requirement in writing by the Department:

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 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.



Within seven days of the receipt of any written comments from the Department, the Operator 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.

E. That, within five days of receipt of this Order, the Operator shall have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

F. That, within ten days of receipt of this Order, the Operator shall submit to the Department a CBMPP detailing effective BMPs to be implemented to prevent/minimize, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility, and ensure full compliance with the requirements of ADEM Admin. Code chap. 335-6-12.

G. That, within ten days of receipt of this Order, the Operator shall submit to the Department a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facility deposited offsite and in State waters.

H. That, within twenty days of receipt of this Order, the Operator shall implement effective BMPs, implement all plans required by this Order, and correct all deficiencies at the Facility, offsite conveyances, including sediment removal/remediation in a manner acceptable to the Department.

I. That, within twenty-five days of receipt of this Order, the Operator shall submit to the Department a certification 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 including sediment removal/remediation in a manner acceptable to the Department.

J. Should any provision of this 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.

K. Except as otherwise set forth herein, this 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.

L. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

M. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.



ORDERED and ISSUED this 5<sup>th</sup> day of September, 2008.

Mandy Elliott  
Onis "Trey" Glenn, III, Director  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, AL 36110-2059  
(334) 271-7700

**ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE**

I, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order 08-203-MNPS upon the person listed below by sending the same, postage paid, through the United States Mail certified mail receipt #7005 3110 0000 9536 0981, with instructions to forward and return receipt, to:

Steve Williams  
SDW, Inc.  
PO Box 71002  
Tuscaloosa, AL 35407

DONE this 5<sup>TH</sup> day of September, 2008.

A handwritten signature in black ink, appearing to read 'Steven O. Jenkins', is written over a horizontal line.

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



Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

7005 3110 0000 9536 0981

STEVE WILLIAMS  
SDW INC  
P.O. BOX 71002  
TUSCALOOSA AL 35407



**RETURN RECEIPT REQUESTED**

- ☐ Registered ☒ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

102595-97-B-0179

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SEP 5 2008

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SDW INC  
PO BOX 71002  
TUSCALOOSA AL 35407

PS Form 3800, June 2002

See Reverse for Instructions

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