

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

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

February 26, 2021

CERTIFIED MAIL

Shawn Newton
E Cornell Malone Corp.
2621 Queenstown Road
Birmingham, AL 35210

RE: Final Consent Order
Unpermitted FID 63903.1
Jefferson County (073)

Dear Mr. Newton:

Please find the enclosed Special Order by Consent Order which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of E Cornell Malone Corp.

The draft order was made available for public review for a period of 30 days beginning on December 18, 2020. Public comments were received. Response to the comments received is attached for your reference.

The enclosed Special Order by Consent is effective immediately. Please note that the assessed civil penalty is due in full within 45 days.

Should you have any questions regarding the order please contact Josh Therrien, by email at jtherrien@adem.state.al.us or by phone at (205) 942-6168.

Sincerely,

Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: ECO/XXX

Enclosure

cc: Shawn Sibley, ADEM
Valerie Jackson, ADEM
Lynn Battle, ADEM
Rebecca Patty, ADEM
Birmingham Branch, 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
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

E CORNELL MALONE CORP.
E CORNELL MALONE CORP. PROPERTY
BIRMINGHAM, T17S, R1W, S3
JEFFERSON COUNTY, ALABAMA
FID#63903.1

ORDER 21-032-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and E Cornell Malone Corp (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, as amended.

STIPULATIONS

1. The Operator is an Alabama corporation that is registered with the Alabama Secretary of State's Office. The Operator is constructing the commercial development, E Cornell Malone Corp Property (hereinafter "Facility") located off Queenstown Road, in Birmingham, Jefferson County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to unnamed tributary of Stinking Creek a water of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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, as

amended. 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 22-22A-14, as amended.

4. 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.

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NOI	Notice of Intent
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
WL	Warning Letter

5. 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.

6. The Department, during inspections of the Facility on May 28, 2020, and August 6, 2020, documented that the Operator had not registered for and obtained NPDES coverage prior to commencing regulated disturbance activities. Therefore, the Operator violated ADEM Admin. Code r. 335-6-12-.11 by operating an NPDES construction site without having submitted a complete and correct NOR to the Department.

7. 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 Administrative Code Division 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").

8. During the inspections of the Facility on May 28, 2020, and August 6, 2020, the Department observed and documented that, the Operator had not properly implemented and maintained effective BMPs although NPDES construction activity had commenced and was continuing, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

9. ADEM Admin. Code r. 335-6-12-.35(10) requires operators to promptly take all reasonable steps to determine the nature and impact of non-complying discharge, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

10. During the August 6, 2020, inspection, the Department observed and documented accumulations of sediment resulting from discharges at the Facility offsite in violation of ADEM Admin. Code r. 335-6-12-.21(1).

11. On June 8, 2020, a WL was sent to the Operator by the Department as a result of the May 28, 2020, inspection. The WL notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department a report showing steps that were taken at the Facility to correct the noted violations within ten days of receipt of the WL. The required report has not been received by the Department.

12. On August 21, 2020, a NOV was sent to the Operator by the Department as a result of the August 6, 2020, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department a report prepared by a QCP showing steps that were taken at the Facility to correct the noted violations within ten days of receipt of the NOV. The required report has not been received by the Department.

13. Ala. Code § 22-22-9(e), as amended, requires an operator to respond within the specified time frame to a notice of violation or non-compliance by the Department. The Operator violated Ala. Code § 22-22-9(e), as amended, by failing to respond to the NOV.

14. The Operator neither admits nor denies the Department's allegations. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

15. 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

16. 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 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. Any civil penalty assessed pursuant to this authority shall not exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$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 magnitude and duration of the violations, their effects, if any on impaired waters, and lack of any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$22,300.00.

B. **THE STANDARD OF CARE:** In considering this factor, the Department noted the substantial off-site environmental impacts to adjacent property. In consideration of the standard of care by the Operator, the Department enhanced the penalty by \$12,100.00.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Operator has delayed certain costs with implementing and maintaining proper BMPs. In consideration of the economic benefit to the Operator, the Department has enhanced the penalty by an additional \$100.00.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any previous violations not addressed above.

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

G. 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.

H. The civil penalty is summarized in Attachment 1.

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 \$20,000.00 in settlement of the violations alleged herein within forty-five (45) days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five (45) 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. 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. That the Operator shall take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. That the Operator shall, within five (5) days of the date of issuance of this Consent Order, have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. That the Operator shall, within ten (10) days of the date of issuance of this Consent Order, submit to the Department the results of the QCP comprehensive inspection and a plan to return the Facility, offsite conveyances, and affected State waters to compliance with Permit requirements.

F. That, within ten (10) days of the date of issuance of this Consent Order, to submit to the Department a complete NOI. The NOI, including the appropriate permit fees, should be submitted electronically via the e-NOI system for the NPDES Construction General Permit on the ADEM website at <https://app.adem.alabama.gov/eNOI/>.

G. That, within thirty (30) days of the date of issuance of this Consent Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

H. That, within seven (7) days of the completion of the activities required in G above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12 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.

I. 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. 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.

K. 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 (10) 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. 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. 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.

O. This Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

P. 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. 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.

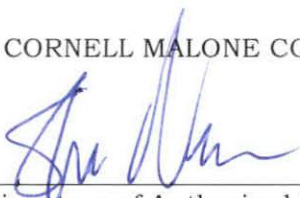
R. That any modifications of this Consent Order must be agreed to in writing and signed by both parties.

S. 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.

E CORNELL MALONE CORP.



(Signature of Authorized Representative)

SHAWN NEWTON
(Print Name of Authorized Representative)

GM
Title

Date Signed: 12/8/20

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Lance R. LeFleur
Director

Date Signed: 2/26/21

ATTACHMENT 1 - PENALTY SYNOPSIS

E CORNELL MALONE CORP. - E CORNELL MALONE CORP. PROPERTY **Birmingham,**
Jefferson County **FID63903.1**

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operating an NPDES construction site without, or outside of, NPDES coverage.	1	\$5,000	\$3,800	
Effective Best Management Practices (BMPs) not implemented and/or maintained	2	\$6,000	\$4,500	
Discharge/accumulation of sediment offsite	1	\$7,500	\$2,500	
Failure to respond to a Notice of Violation	1	\$3,800	\$1,300	
Totals:	5	\$22,300	\$12,100	
Economic Benefit*:				\$100
Sub-Total:				\$34,500
Mitigating Factors*:				
Ability to Pay*:				
Other Factors*:				
Amount of Initial Penalty:				\$34,500
Total Adjustments:				-\$14,500
Final Penalty:				\$20,000

*See the Department's "Contentions" portion of the Order for a detailed description of each violation and the penalty factors.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

E CORNELL MALONE CORP.
E CORNELL MALONE CORP. PROPERTY
BIRMINGHAM, T17S, R1W, S3
JEFFERSON COUNTY, ALABAMA
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15. 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.

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16. 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 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. Any civil penalty assessed pursuant to this authority shall not exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$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:

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D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any previous violations not addressed above.

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

G. 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.

H. The civil penalty is summarized in Attachment 1.

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.

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G. That, within thirty (30) days of the date of issuance of this Consent Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

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I. 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. 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.

K. 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 (10) 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. 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. 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.

O. This Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

P. 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. 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.

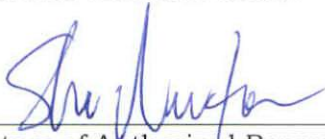
R. That any modifications of this Consent Order must be agreed to in writing and signed by both parties.

S. 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.

E CORNELL MALONE CORP.


(Signature of Authorized Representative)

SHAWN MALONE
(Print Name of Authorized Representative)

GM
Title

Date Signed: 12/8/20

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. LeFleur
Director

Date Signed: 2/26/21

ATTACHMENT 1 - PENALTY SYNOPSIS

E CORNELL MALONE CORP. - E CORNELL MALONE CORP. PROPERTY Birmingham,
Jefferson County FID63903.1

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operating an NPDES construction site without, or outside of, NPDES coverage.	1	\$5,000	\$3,800	
Effective Best Management Practices (BMPs) not implemented and/or maintained	2	\$6,000	\$4,500	
Discharge/accumulation of sediment offsite	1	\$7,500	\$2,500	
Failure to respond to a Notice of Violation	1	\$3,800	\$1,300	
Totals:	5	\$22,300	\$12,100	
Economic Benefit*:				\$100
Sub-Total:				\$34,500
Mitigating Factors*:				
Ability to Pay*:				
Other Factors*:				
Amount of Initial Penalty:				\$34,500
Total Adjustments:				-\$14,500
Final Penalty:				\$20,000

*See the Department's "Contentions" portion of the Order for a detailed description of each violation and the penalty factors.



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

February 26, 2021

Mr. David Butler
Cahaba Riverkeeper, Inc.
4650 Old Looney Mill Road
Birmingham AL 35243

RE: E. Cornell Malone Corp.
E. Cornell Malone Corp. Property
Unpermitted FID 63903.1
Jefferson County (073)

Dear Mr. Butler:

The Department has received your letter dated January 13, 2021, regarding the Department's proposed issuance of a Consent Order for the above-referenced facility. The proposed issuance of the Consent Order was the subject of a public comment period that began on December 18, 2020 and ended on January 17, 2021.

Your letter contained various comments regarding the Department's proposed issuance of the Consent Order along with a request for a public hearing. The Department appreciates your interest in this matter and has thoroughly examined your comments along with the facts and findings regarding the Consent Order. While the Department has determined that a public hearing is not warranted, outlined below you will find detailed responses to the comments submitted in your letter.

Comment: The proposed penalty amounts do not reflect the seriousness of the violations, threat to public safety, the blatant disregard for requirements set forth in either the initial Warning Letter or subsequent NOV, or the economic benefit the responsible party realized by delaying compliance and ignoring the required reporting requirements set forth in both the Warning Letter and NOV.

Response: The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c), as amended, in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The Department can and should require a soil loss equation and subsequent remediation of Mountain Lake.

Response: The proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters.

Comment: It is unclear if the Department has ever visited the site during or shortly after a qualifying rain event, despite the ongoing nature of violations and the alleged harm to the environment. Additionally, the Department continues to refuse to accept citizen-submitted evidence to document those violations. The Department has consistently refused to cite any statutory authority that would prevent such consideration, while lamenting the impacts of budget and pandemic concerns. In our view, the best way to minimize the harm of these issues is for the Department to develop a system of authenticating citizen-submitted evidence.



Response: The proposed Consent Order contains a detailed chronology of the Department's inspections and enforcement actions related to the facility. The Department must rely on information/data that is collected by its staff when initiating enforcement actions. Thus, the information contained in the proposed Consent Order is based on inspections performed by the Department's inspectors. The Department does utilize information and complaints from citizens to prioritize our inspection efforts.

Comment: The Department's ability to get the site into compliance over the previous 11 months also frustrates the ability of the City of Irondale to pursue enforcement actions.

Response: The City of Irondale has the authority to pursue enforcement actions independent of Department enforcements. As outlined in the proposed Consent Order, the Department attempted to obtain compliance through the issuance of a Warning Letter and then a Notice of Violation. However, the Responsible Party chose not to comply with those requirements so the Department has proposed the issuance of this Consent Order, with a civil penalty, in order to obtain compliance.

Comment: The Department assessed a penalty of \$22,300. In our view, this amount does not accurately reflect the seriousness and harm of 11 consecutive months of non-compliance. Additionally, the responsible party's refusal to meet the requirements of either the Warning Letter or NOV should enhance the penalty, not result in a discount.

Response: The Department made a careful evaluation of the "Seriousness of Violation" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The proposed Consent Order fails to recognize the threat to public safety created by the siltation of Mountain Lake. The siltation of Mountain Lake threatens public safety directly because as the lake's carrying capacity is reduced, flooding into and over the road that provides the only access to the surrounding neighborhood is exacerbated, leaving residents and emergency vehicles with no other means of access.

Response: The proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance.

The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. Issues related to changes in topography, flooding, or water quantity are more appropriately addressed to local officials in the Planning/Zoning Department or Engineering Department.

Comment: The proposed Consent Order does not reflect the seriousness of the harm to the environment. As you are aware, the Upper Cahaba is impaired by siltation, exacerbated by a combination of poor construction stormwater oversight and the resulting in-stream erosion created by inadequate post-construction stormwater controls. Since the responsible party still has not submitted a complete NOI, it is inconceivable that the Department has adequately considered the long-term impact of the stormwater impacts at this facility, if it is ever approved for re-zoning.

Response: The Department made a careful evaluation of the "Seriousness of Violation" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result,

the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The proposed Consent Order should require a sediment removal plan, approved by the residents of Mountain Lake Estates, detailing the amount and method of sediment removal intended to mitigate the alleged harm.

Response: The proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. The plan for removal/remediation of sediment and other pollutants deposited offsite and/or in State waters will have to document proof of coordination with affected land owners regarding access to perform removal/remediation and will also have to provide details regarding the method of sediment removal, storage of removed material, final deposition of that material, and use of Best Manage Practices to be implemented during the removal/remediation process. Once removal/remediation is completed the Responsible Party will be required to provide certification that all removal/remediation efforts have been completed.

Comment: The Department has assessed this component of the penalty to be \$12,100. In our view, this amount does not reflect the egregious nature of the violations.

Response: The Department made a careful evaluation of the "Standard of Care" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The penalty calculation worksheet details the amount of each fine, but in our view, the assessed penalties are not consistent with the failure to adhere to a reasonable standard of care, despite the "seriousness of violation" enhancements.

Response: The Department made a careful evaluation of the "Standard of Care" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The proposed Consent Order fails to adequately reflect the economic benefit conferred by continuing non-compliance.

Response: The Department made a careful evaluation of the "Economic Benefit" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The responsible party has an 11 month history of violations at this site, as well as a documented history of ignoring the requirements of the Department's enforcement efforts.

Response: The Department made a careful evaluation of the "History of Violations" penalty factor based on the evidence available to the Department. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Comment: The proposed Consent Order does not detail any reason why the responsible party cannot afford to pay a more significant penalty.

Response: The Operator has not signified an inability to pay the proposed penalty amount. The Department has considered the factors enumerated in Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate. In addition, the proposed Consent Order is a negotiated settlement for the resolution of the documented violations and is being proposed in order to avoid the additional expense of State resources due to potential litigation.

Based upon our review of your comments, the Department has determined that no changes to the proposed Consent Order are necessary.

In the event you have any questions, please feel free to contact Mr. Derick E. Houston at (205) 942-6168.

Sincerely,



Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: RTC/XXX

cc: Birmingham Branch, ADEM
Rebecca Patty, ADEM



January 13, 2021

Alabama Department of Environmental Management
ATTN: Anthony Scott Hughes, Chief of Field Operations Division
PO Box 301463
Montgomery, Alabama 36130-1463

Mr. Hughes,

We wish to submit the following public comments RE: E. Cornell Malone (FID#63903.1).

In late March, 2020, the E. Cornell Malone Company commenced grading and land-clearing activity on their property off Queenstown Road, within the City of Irondale. At the moment, the property is zoned residential, which is incompatible with the intended use of the property. Additionally, the responsible party did not seek or obtain an NPDES permit prior to commencing land-disturbing activity from the Department despite the disturbed area being greater than one acre. We are unaware of any current effort to have the property re-zoned and have not seen an NOI.

Since March, the Department has been in regular contact with downstream property owners, the City of Irondale, and Cahaba Riverkeeper, Inc. The Department has received and investigated at least two formal complaints. Additionally, those parties have continued to document and report the off-site impact of this development on the UT to Stinking Creek as well as the lake at Mountain Lake Estates as recently as January 1st, 2021.

As noted in the proposed consent order, when determining the amount of any penalty, ADEM must: "give consideration to the seriousness of the violation, including any irreparable harm to the environment and any serious 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 to pay such penalty."

In this case, we believe the proposed penalty amounts do not reflect the seriousness of the violations, the threat to public safety, the blatant disregard for requirements set forth in either the initial warning letter or subsequent NOV, or the economic benefit the responsible party realized

by delaying compliance and ignoring the required reporting requirements set forth in both the Warning Letter and NOV.

We believe that the department can and should require a soil loss calculation and subsequent remediation of Mountain Lake, similar to the approach in settling the Vestavia Country Club violations with respect to Vestavia Lake. Since the site is in close proximity to the lake, any remediation should be done at the lake since the character of the drainage prevents meaningful accumulation in the drainage between the responsible site and the lake. The residents of Mountain Lakes Estates are open to reviewing a plan and providing access if the plan is acceptable. The expensive task of removing the accumulated sediment from the lake should not be the burden of the residents.

It is unclear if the department has ever visited the site during or shortly after a qualifying rain event, despite the ongoing nature of violations and the alleged harm to the environment. Additionally, the Department continues to refuse to accept citizen-submitted evidence to document those violations. The department has consistently refused to cite any statutory authority that would prevent such consideration, while lamenting the impacts of budget and pandemic concerns. In our view, the best way to minimize the harm of these issues is for the Department to develop a system of authenticating citizen-submitted evidence.

With respect to the specific criteria the Department must evaluate pursuant to Ala. Code § 22-22A-5(18)(c), as amended, we offer the following comments:

1. "Consideration to the seriousness of the violation, including any irreparable harm to the environment and any serious threat to the health or safety of the public;"

The Department has assessed a penalty of \$22,300.00. In our view, this amount does not accurately reflect the seriousness and harm of 11 consecutive months of non-compliance. Additionally, the responsible party's refusal to meet the requirements of either the Warning Letter or NOV should enhance the penalty, not result in a discount.

The proposed consent order fails to recognize the threat to public safety created by the siltation of Mountain Lakes. The siltation of Mountain Lake threatens public safety directly because as the lake's carrying capacity is reduced, flooding into and over the road that provides the only access to the surrounding neighborhood is exacerbated, leaving residents and emergency vehicles with no other means of access.

The proposed consent order does not reflect the seriousness of the harm to the environment. As you are aware, the Upper Cahaba is impaired by siltation, exacerbated by a combination of poor construction stormwater oversight and the resulting in-stream erosion created by inadequate post-construction stormwater controls. Since the responsible party still has not submitted a

complete NOI, it is inconceivable that the Department has adequately considered the long-term impact of the stormwater impacts at this facility, if it is ever approved for re-zoning.

The proposed consent order should require a sediment removal plan, approved by the residents of Mountain Lake Estates, detailing the amount and method of sediment removal intended to mitigate the alleged harm.

2. "the standard of care manifested by such person;"

The department has assessed this component of the penalty to be \$12,100. In our view, this amount does not reflect the egregious nature of the violations.

As noted above, the responsible party has not had the property rezoned, has not applied for an NPDES permit, has not responded to multiple directives from the department, and is still actively developing the site while in violation.

The responsible party, according to publicly available records, has never submitted a Non-Compliance report, has not submitted any inspection records following qualifying rain events, has not documented what steps are or have been taken to minimize the violations, and has consistently failed to take meaningful action to mitigate the ongoing harm to the environment.

The penalty calculation worksheet details the amount of each fine, but in our view, the assessed penalties are not consistent with the failure to adhere to a reasonable standard of care, despite the "seriousness of violation" enhancements.

The penalty for discharge/accumulation of sediment offsite has been assessed at \$2,500, despite the financial burden this places on the residents of Mountain Lake Estates to remove that sediment.

The penalty assessed for failing to submit an NOI and obtain an NPDES permit is \$3,800, which is likely less than the cost, including a CBMPP and site plan, to obtain permit coverage.

Failure to initially install, and the ongoing failure to repair or improve BMPs, has been assessed at \$4,500. We believe this assessment is less than the likely costs that would have been incurred had the responsible party effectively managed the site, creating a disincentive to obtain permit coverage and comply with the conditions of such a permit.

While ignoring the Department's requests, the responsible party has continued to develop the property in a manner consistent with their intended use of the property, despite the fact that the use is inconsistent with current zoning requirements and no permit coverage has been obtained, reflecting no concern with the required standard of care contemplated by the Department.

3. "the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment;"

While we recognize the proposed consent order is an effort to settle the included violations, the proposed consent order fails to adequately reflect the economic benefit conferred by continuing non-compliance.

For this component, the Department has proposed a penalty enhancement of \$100. It is clear from the public record that the economic benefit realized by the responsible party greatly exceeds this assessment. From March to the present, the responsible party has not effectively implemented or maintained adequate BMP's, there is no record that a QCP has ever submitted a detailed CBMPP, and the responsible party has twice avoided the price of submitting the required documents in response to the Department's enforcement effort. The responsible party has also avoided paying permit fees, as well as the daily cost of maintaining the sparse BMPs on site, as well as the cost of mitigating the damage to Mountain Lakes, Stinking Creek or the main stem of the Cahaba.

There is little context to understand how the Department arrived at this enhancement, and simply using a number to satisfy this requirement is not in the best interests of the citizens of this state.

4. "such person's history of previous violations;"

As noted, the responsible party has an 11 month history of violations at this site, as well as a documented history of ignoring the requirements of the Department's enforcement efforts.

5. "ability to pay such penalty."

The Proposed Consent Order does not detail any reason why the responsible party cannot afford to pay a more significant penalty.

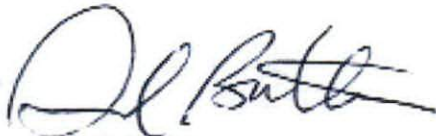
Additionally, the Department has reduced the penalty amount in the proposed consent order by \$14,500, which equals roughly 42% of the original penalty. There is nothing in the public record, or proposed consent order, to detail why such a reduction is warranted, especially considering the blatant nature of the violations.

Finally, the department's inability to get the site into compliance over the previous 11 months also frustrates the ability of the City of Irondale to pursue enforcement action. Despite fielding complaints from residents, the city has been asked to allow ADEM to pursue enforcement action and such action has not resulted in a timely return to compliance.

In our view, the Department's approach to timely compliance and the resulting proposed consent order do nothing to inspire confidence in the citizen's of the state that the Department is protecting the environment and the proposed consent order is not in the best interests of the citizens of the state.

For these reasons, we request a public hearing.

Respectfully,

A handwritten signature in black ink, appearing to read "D. Butler", with a stylized, cursive script.

David Butler

Staff Attorney, Cahaba Riverkeeper, Inc.



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

February 26, 2021

Beth Stewart
Executive Director
Cahaba River Society
2717 7th Avenue South, Suite 205
Birmingham AL 35233

RE: Proposed Consent Order
E. Cornell Malone Corp.
Unpermitted FID 63903.1
Jefferson County (073)

Dear Ms. Stewart:

The Department has received your letter sent to the Department on January 14, 2021, regarding the Department's proposed issuance of a Consent Order for the above-referenced facility. The proposed issuance of the Consent Order was the subject of a public comment period that began on December 18, 2020 and ended on January 17, 2021.

Your email contained various comments regarding the Department's proposed issuance of the Consent Order along with a request for a public hearing. The Department appreciates your interest in this matter and has thoroughly examined your comments along with the facts and findings regarding the Consent Order. While the Department has determined that a public hearing is not warranted, outlined below you will find detailed responses to the comments submitted in your letter.

Comment: This is also a vivid example of the ways that enforcement of sediment and erosion control is frequently failing, both at the level of ADEM and the local government MS4s.

Response: The Department's enforcement actions related to sediment and erosion control are routinely reviewed by the U.S. Environmental Protection Agency and found to be consistent with federal standards.

Comment: There is also the need to improve the enforcement coordination between ADEM and MS4s, and to ensure that cities and counties have the local enforcement tools necessary for them to take effective action as required by their MS4 permit.

Response: The Department communicates often with MS4s regarding the development, implementation and compliance of MS4 permits which are developed to be protective of human health and the environment. The Department also receives / reviews annual reports and performs audits of MS4 programs.



Comment: Stripping and grading occurred without permits or approvals from either ADEM or the City of Irondale.

Response: The Department's enforcement action addresses the operation of a construction site without an NPDES permit and a civil penalty was assessed for that violation.

Comment: It is difficult to understand how neither ADEM nor the City of Irondale has had the enforcement tools sufficient to stop and mitigate the violation for this long time, during which environmental and property damage continued to occur.

Response: As outlined in the proposed Consent Order, the Department attempted to obtain compliance through the issuance of a Warning Letter and then a Notice of Violation. However, the Responsible Party chose not to comply with those requirements so the Department has proposed the issuance of this Consent Order, with a civil penalty, in order to obtain compliance. The proposed Consent Order, which has been agreed to by the Responsible Party, will result in facility compliance.

Comment: A complicating factor is the difficulty of coordinating implementation and enforcement of Irondale's MS4 stormwater permit requirements and codes, Irondale's zoning and subdivision requirements, and ADEM's NPDES permit requirements for construction sites. Irondale evidently does not have the enforcement tools necessary to end this egregious violation.

Response: The Department communicates often with MS4s regarding the development, implementation and compliance of MS4 permits which are developed to be protective of human health and the environment. The Department also receives / reviews annual reports and performs audits of MS4 programs.

Comment: Submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to stabilize the site, prevent any further erosion and offsite sedimentation, and return the site to the predevelopment stormwater runoff volume and velocity so as to prevent instream erosion of downstream drainage channels.

Response: The proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. Concerns regarding water quantity issues are more appropriately addressed to local officials in the Planning/Zoning Department or Engineering Department.

Comment: Submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to remove sediment from Mountain Lake and restore it as closely as possible to conditions prior to the violation.

Response: The proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters.

Comment: In addition, we recommend submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to monitor the success of those efforts for at least 2 years, including monitoring site runoff, any instream erosion of downstream channels, and sedimentation of the lake, with the ability to require further mitigations as needed.

Response: As noted above, the proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. The Department will continue to monitor/inspect the site to ensure continued compliance.

Comment: Additionally, we ask for ADEM staff to evaluate possibilities for better coordination of NPDES and MS4 enforcement internally and together with the cities and counties, towards more rapid response and remedy of water quality violations. It is evident from this case that Irondale, and likely many MS4s, need to improve their enforcement tools for the construction and post-construction stormwater requirements of their MS4 permit. Otherwise, the MS4s cannot live up to those requirements.

Response: As noted above, the Department communicates often with MS4s regarding the development, implementation and compliance of MS4 permits which are developed to be protective of human health and the environment. In addition, the Department is always reviewing its processes / procedures to identify ways to improve performance and we will continue to work to ensure effective communications with municipalities that operate under MS4 permits.

Comment: We also ask ADEM to clear up any lingering misconceptions with the MS4s that they must stand aside and wait for ADEM enforcement action. MS4 jurisdictions need to have the tools, staff capacity, and independent authority to swiftly pursue enforcement of violations to protect their citizens and water resources.

Response: As noted above, the Department communicates often with MS4s regarding the development, implementation and compliance of MS4 permits which are developed to be protective of human health and the environment. In addition, the Department is always reviewing its processes / procedures to identify ways to improve performance and we will continue to work to ensure effective communications with municipalities that operate under MS4 permits.

Comment: We request that ADEM state clearly to the MS4s and to the public what the expectations are for enforcement of the MS4 permits and work together with them to improve tools for local enforcement.

Response: As noted above, the Department communicates often with MS4s regarding the development, implementation and compliance of MS4 permits which are developed to be protective of human health and the environment. In addition, the Department is always reviewing its processes / procedures to identify ways to improve performance and we will continue to work to ensure effective communications with municipalities that operate under MS4 permits.

Based upon our review of your comments, the Department has determined that no changes to the proposed Consent Order are necessary.

In the event you have any questions, please feel free to contact Mr. Derick E. Houston at (205) 942-6168.

Sincerely,

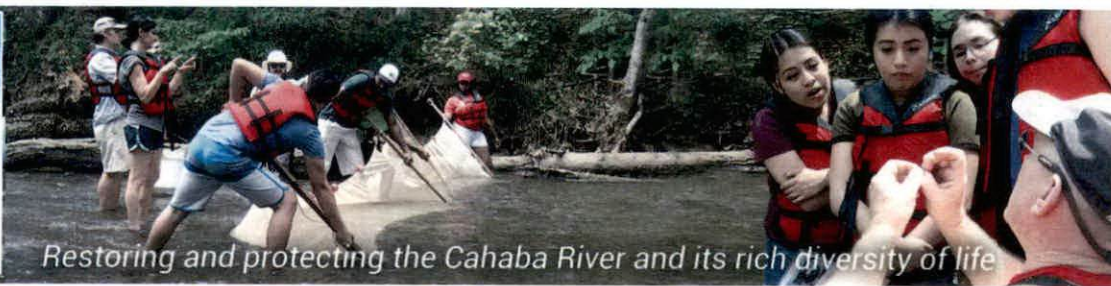
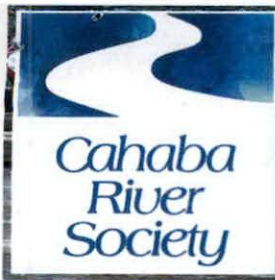


Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: RTC/XXX

cc: Birmingham Branch, ADEM
Rebecca Patty, ADEM



Restoring and protecting the Cahaba River and its rich diversity of life

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January 14, 2021

Scott Hughes
Chief of Field Operations Division
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
Via email

Re: Comment on E. Cornell Malone Consent Order of 12-18-21

Dear Mr. Hughes:

Cahaba River Society appreciates the opportunity to comment on the consent order seeking to end the water quality and permit violations of the E. Cornell Malone project and to require their mitigation of damages. We appreciate ADEM taking this step and respectfully request a public hearing on this consent order.

CRS is a 501c3 nonprofit with a mission to restore and protect the Cahaba River watershed and its rich diversity of life. Sediment violations continue to be the major cause of water quality and habitat degradation in the Cahaba watershed.

We write in full support of the recommendations made and evidence presented by Donna Mayo on behalf of Mountain Lake Estates homeowners in their comment letter to ADEM today. We have been in communication with and providing assistance to the MLE residents since early in this debacle, watching this unfold.

We are writing not only to make recommendations regarding strengthening the Consent Order. This is also a vivid example of the ways that enforcement of sediment and erosion control is frequently failing, both at the level of ADEM and the local government MS4s. We say this not to lay blame, but to request and support more practical progress towards water quality protection.

There is the immediate need to end Malone's violation and require them to restore the lake. There is also the need to improve the enforcement coordination between ADEM and MS4s, and to ensure that cities and counties have the local enforcement tools necessary for them to take effective action as required by their MS4 permit.

2717 7th Avenue South, Suite 205, Birmingham, Alabama 35233-3421
Tel 205-322-5326 ~ Fax 205-324-8346
www.CahabaRiverSociety.org

Background and considerations for remedies: This was an egregious violation. Stripping and grading occurred without permits or approvals from either ADEM or the City of Irondale. The amount of mud that has washed off of this site into downstream channels, infrastructure, and the lake itself has been essentially unabated for about 10 months. It is difficult to understand how neither ADEM nor the City of Irondale has had the enforcement tools sufficient to stop and mitigate the violation for this long time, during which environmental and property damage continued to occur.

It is also inexcusable that Malone did not take effective action to cease their violations during all of this time. Malone has been using the site in violation of zoning, gaining economic value from their illegal activities, while the property values of the residents and the water quality of their lake have suffered.

We are concerned not only about the inadequate sediment and erosion control, but also the destabilizing effect on downstream waterways, which will continue to send sediment into the lake. The illegal clearing and grading of the site, removing forest and topsoil, drastically altered site hydrology and will continue to cause instream erosion of the drainage channels and natural areas between the site and the lake, unless the impacts of increased volume and rate of stormwater runoff are mitigated.

A complicating factor is the difficulty of coordinating implementation and enforcement of Irondale's MS4 stormwater permit requirements and codes, Irondale's zoning and subdivision requirements, and ADEM's NPDES permit requirements for construction sites. Irondale evidently does not have the enforcement tools necessary to end this egregious violation.

Remedies: We agree with the recommendations of the MLE Homeowners Association. ADEM's Consent Order should be strengthened as needed to require the following:

Submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to stabilize the site, prevent any further erosion and offsite sedimentation, and return the site to the predevelopment stormwater runoff volume and velocity so as to prevent instream erosion of downstream drainage channels.

Submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to remove sediment from Mountain Lake and restore it as closely as possible to conditions prior to the violation.

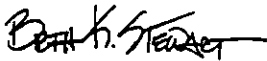
In addition, we recommend submittal and implementation of a plan prepared by an engineer, and made available for review and comment by the MLE homeowners and City of Irondale as well as approval by ADEM, to monitor the success of those efforts for at least 2 years, including monitoring site runoff, any instream erosion of downstream channels, and sedimentation of the lake, with the ability to require further mitigations as needed.

Additionally, we ask for ADEM staff to evaluate possibilities for better coordination of NPDES and MS4 enforcement internally and together with the cities and counties, towards more rapid response and remedy of water quality violations. It is evident from this case that Irondale, and likely many MS4s, need to improve their enforcement tools for the construction and post-construction stormwater requirements of their MS4 permit. Otherwise, the MS4s cannot live up to those requirements.

We also ask ADEM to clear up any lingering misconceptions with the MS4s that they must stand aside and wait for ADEM enforcement action. MS4 jurisdictions need to have the tools, staff capacity, and independent authority to swiftly pursue enforcement of violations to protect their citizens and water resources.

We request that ADEM state clearly to the MS4s and to the public what the expectations are for enforcement of the MS4 permits and to work together with them to improve tools for local enforcement. Please let us know how CRS can continue to support the adoption of best practices by the local governments.

Sincerely,



Beth K. Stewart
Executive Director

cc: Donna Mayo, Mountain Lake Estates
Jimbo Carlson, ADEM
Mayor James Stewart, City of Irondale



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

February 26, 2021

Ms. Donna Mayo
6284 Ransom Road
Irondale AL 35210

RE: Proposed Consent Order
E. Cornell Malone Corp.
Unpermitted FID 63903.1
Jefferson County (073)

Dear Ms. Mayo:

The Department has received your email sent to the Department on January 14, 2021, regarding the Department's proposed issuance of a Consent Order for the above-referenced facility. The proposed issuance of the Consent Order was the subject of a public comment period that began on December 18, 2020 and ended on January 17, 2021.

Your email contained various comments regarding the Department's proposed issuance of the Consent Order along with a request for a public hearing. The Department appreciates your interest in this matter and has thoroughly examined your comments along with the facts and findings regarding the Consent Order. While the Department has determined that a public hearing is not warranted, outlined below you will find detailed responses to the comments submitted in your letter.

Comment: Requests ADEM require that Malone stabilize the site and stop sediment and other pollutants in stormwater from leaving the site and discharging in Mountain Lake, which is part of the Cahaba Watershed, and that Malone submit a stormwater plan that will restore the stormwater to the volume and velocity that existed before Malone cleared the site.

Response: The proposed Consent Order is being issued to ensure that the Responsible Party corrects all site deficiencies, performs remediation of identified impacts, and achieves compliance with the requirements of the Alabama Water Pollution Control Act, ADEM Admin. Code Ch. 335-6-16, and NPDES General Permit ALR100000. Specifically, Paragraph E of the proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. Concerns regarding water quantity issues are more appropriately addressed to local officials in the Planning/Zoning Department or Engineering Department.

Comment: Requests ADEM require Malone to establish permanent ground cover, including permanent grass cover, erosion-resistant hard and soft materials, and all landscape measures necessary. In addition, require Malone correct and maintain an effective perimeter silt fence until permanent vegetation is established.



Response: Paragraph E of the proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance.

Comment: Requests ADEM require Malone remove the sediment from Mountain Lake that has resulted from the runoff from their site. In addition, we would appreciate the opportunity to review a sediment removal plan for the lake.

Response: As noted above, Paragraph E of the proposed Consent Order requires the Responsible Party to submit to the Department the results of a comprehensive inspection performed by a Qualified Credentialed Professional along with a plan to return the facility, offsite conveyances, and affected State waters to compliance. The plan will include a soil loss calculation and removal/remediation plan to address previous sediment impacts to State waters. The plan for removal/remediation of sediment and other pollutants deposited offsite and/or in State waters will have to document proof of coordination with affected land owners regarding access to perform removal/remediation and will also have to provide details regarding the method of sediment removal, storage of removed material, final deposition of that material, and use of Best Management Practices to be implemented during the removal/remediation process. Once removal/remediation is completed the Responsible Party will be required to provide certification that all removal/remediation efforts have been completed.

Based upon our review of your comments, the Department has determined that no changes to the proposed Consent Order are necessary.

In the event you have any questions, please feel free to contact Mr. Derick E. Houston at (205) 942-6168.

Sincerely,



Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: RTC/XXX

cc: Birmingham Branch, ADEM
Rebecca Patty, ADEM

Alabama Department of Environmental Management
ATTN: Anthony Scott Hughes
Chief of Field Operations Division
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059

Dear Mr. Hughes:

With this document, the residents of Mountain Lake Estates (MLE), which is part of the Cahaba Watershed, seek to:

- **comment** on the Proposed Consent Order dated the 18th day of December 2020, between the Alabama Department of Environmental Management (ADEM) and the E Cornell Malone Corp (Malone) and,
- **request a hearing** concerning the Proposed Consent Order.

History of Malone's operation adjacent to Mountain Lake Estates, which is part of the Cahaba Watershed

In early 2020, Malone stripped a wooded hillside next to MLE of all vegetation. (Photos of the cleared site from April 2020 are below.) Malone did not first get the required permits from ADEM or the City of Irondale. After clearing the land, Malone appeared before the Irondale Planning and Zoning Board and requested that the site be zoned light industrial. The request was denied. The Malone site is still zoned residential.

From the time Malone first cleared the site, up until the present day, sediment and other pollutants in stormwater have left the site and discharged into Mountain Lake, which is part of the Cahaba Watershed. (Photos below show the mud and silt washing down the Malone hillside into a ditch that runs into Mountain Lake.) Malone has at various times spread gravel and riprap on the hillside and put up silt fences. (Photos below.) None of these measures has made a difference in the runoff from the site. At no time has Malone attempted to correct the runoff with any landscaping.

MLE filed a complaint with ADEM. Despite two ADEM inspections, an ADEM Warning Letter, an ADEM Notice of Violation, and an ADEM Compliance Assistance Inspection, the discharge from the Malone site into Mountain Lake continues unabated. **Indeed, even after signing the Proposed Consent Decree, which includes a fine of \$20,000, Malone has not stopped the discharge of sediment and other pollutants from their hillside into Mountain Lake.** (Photos taken January 1, 2021, are below.)

Remedy sought by MLE

MLE urgently requests that ADEM require that Malone stabilize the site and stop sediment and other pollutants in stormwater from leaving the site and discharging into Mountain Lake, which is part of the Cahaba Watershed, and that Malone submit a stormwater plan that will restore the stormwater to the volume and velocity that existed before Malone cleared the site.

MLE requests that ADEM require Malone to establish permanent ground cover, including permanent grass cover and erosion-resistant hard and soft materials. Please require all landscape measures necessary, including sod, shrubs, trees, pine straw, and ground mulch. Please require that Malone erect and maintain an effective perimeter silt fence until permanent vegetation is established.

Most important, MLE urgently requests that ADEM require Malone to remove the sediment from Mountain Lake that has resulted from the runoff from their site. One end of our beautiful lake has now been completely filled in by sediment from the Malone hillside. (Photo below.) We would appreciate the opportunity to review a sediment removal plan for the lake.

We request the opportunity to appear before you at a hearing and provide additional evidence, including additional pictures and videos, which documents the continuing Malone runoff and the sedimentation in Mountain Lake caused by Malone.

Respectfully submitted,
Donna Mayo
6284 Ransom Road, Mountain Lake Estates
Irondale, AL 35210

Residents of Mountain Lake Estates

6349 Ransom Road – Luther & Woody Boudra
6216 Ransom Road – Robert & Laura Box
6242 Ransom Road – Andrea & Chris Carlisle
6430 Ransom Road – Wayne Carlson & Ping Hua
6077 Ransom Road – Terry Case
6284 Ransom Road – Forrest Duncan & Donna Mayo
6339 Ransom Road – Robert & Ann Etheredge
6401 Ransom Road – Jeremy & Jacquie Hearn
6528 Ransom Road – Susan Hughes
6316 Ransom Road – Butch & Cecelia Lee
6359 Ransom Road – Mike Macmahon
6422 Ransom Road – Victor Mark & Sandy Smith
6039 Ransom Road – Charles & Ann McDanal

6076 Ransom Road – Rosemary McKinney
6260 Ransom Road – Reggie & Cecelia Mobley
6057 Ransom Road – Dorothy Montanye and Karen Freeberg
6425 Ransom Road – Raymond & Mary Morton
6437 Ransom Road – Michael & Suzanne Muir
6385 Ransom Road – Nick and Samantha Noland
6094 Ransom Road – Joe & Kim North
6194 Ransom Road – Ken & Linda Osborn
6664 Ransom Road – Robin & Cindy Park
6200 Ransom Road – Lackey Parker
6636 Ransom Road – Mike & Laura Parker
6018 Ransom Road – Robert L. Phillips & Kimberly McLean
6300 Ransom Road – Chris Stark & Amanda Griesdorn
6056 Ransom Road – Tom & Pam Swaffield
6411 Ransom Road – Jim & Lynn Timmerman
6095 Ransom Road – Brian & Ivey Wade

Malone site April 2020 (Malone removed remaining trees.)



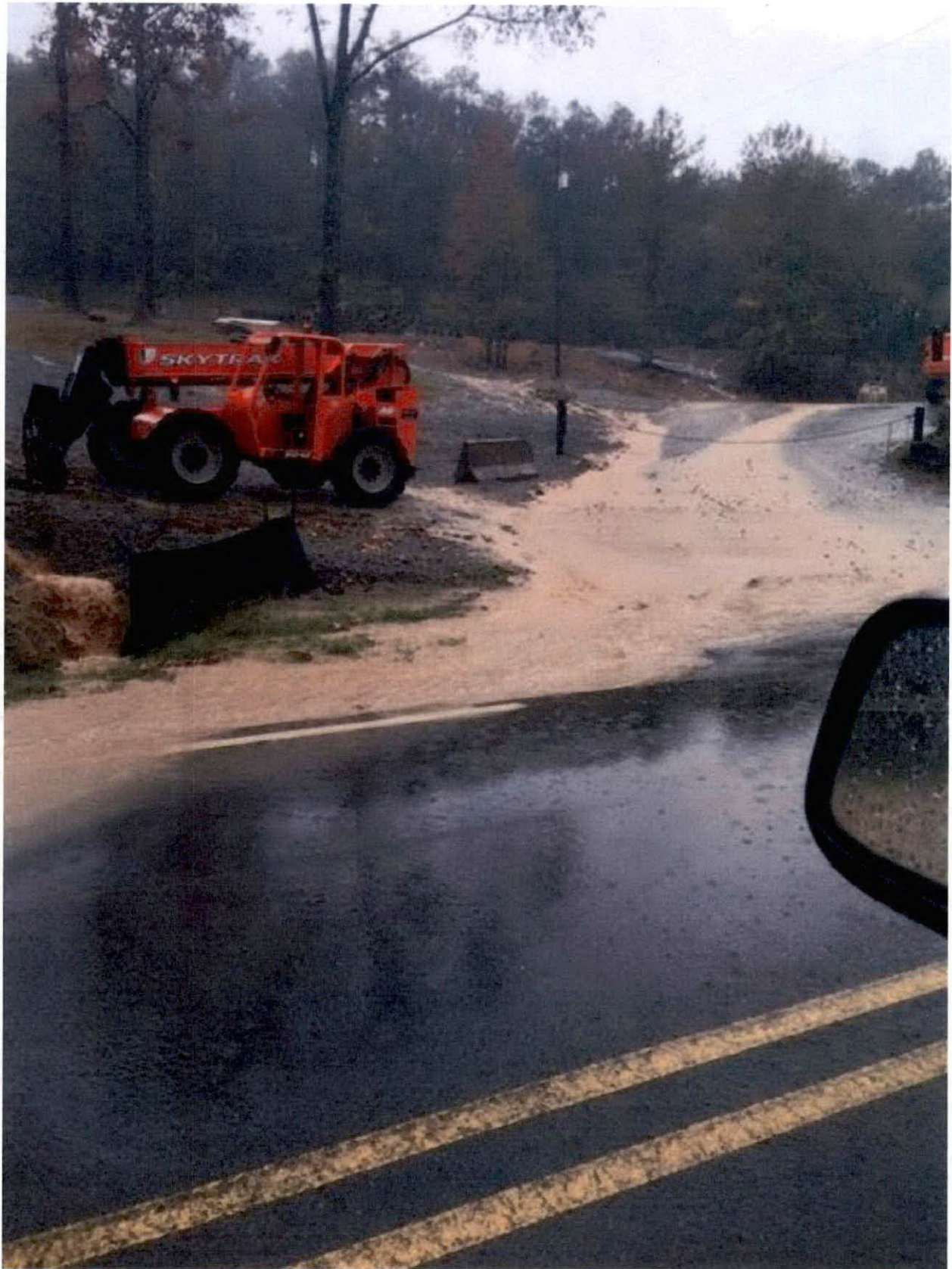
Malone site April 2020



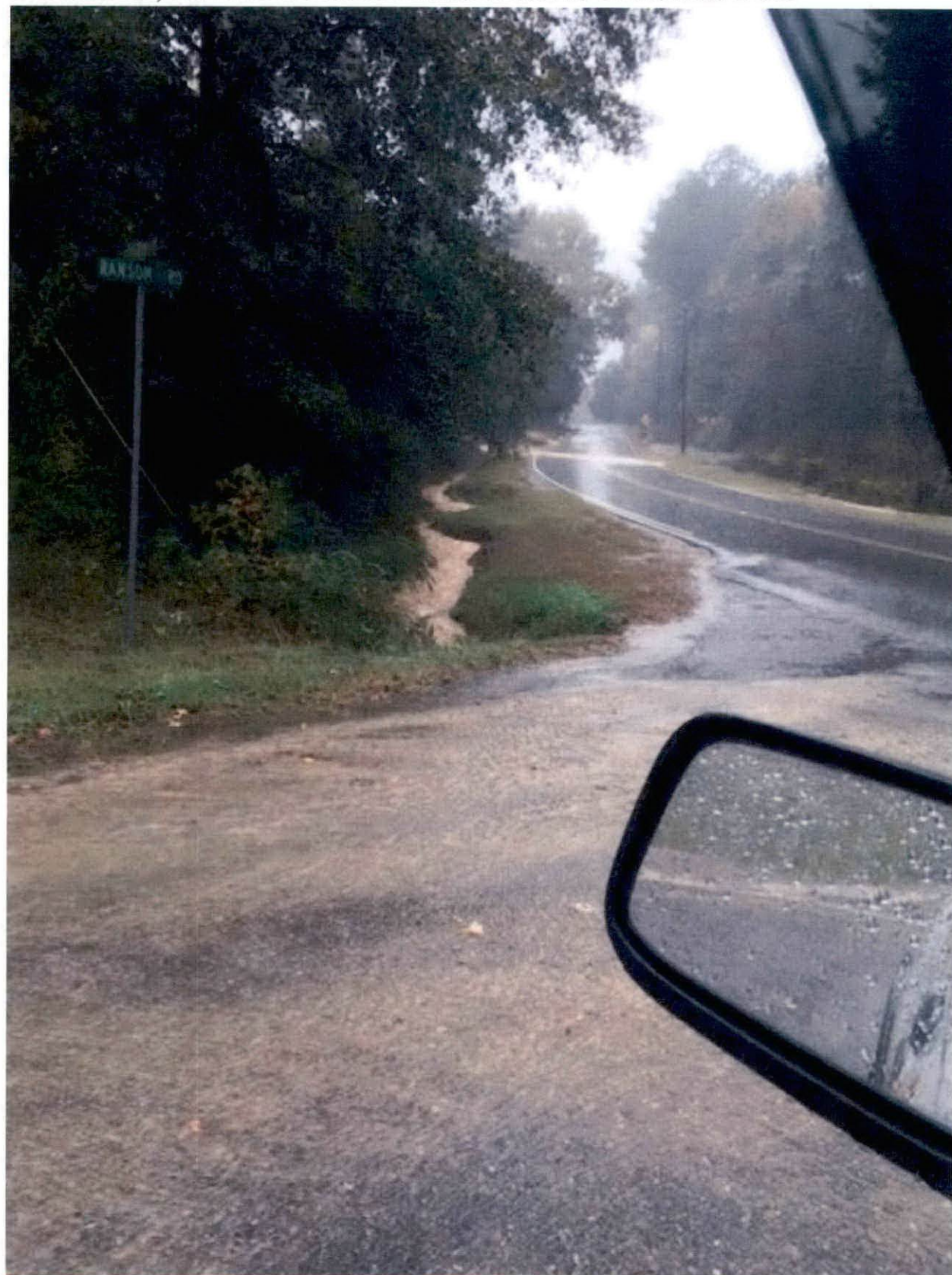
Malone residential site gravel and riprap, no landscaping



October 10, 2020. Malone site runoff



October 10, 2020. Ditch from Malone site to Mountain Lake



January 1, 2021. Malone site silt fence. Please notice date.



January 1, 2021. Malone site runoff. Please notice date.



January 1, 2021. Ditch from Malone to Mountain Lake. Pls notice date.



January 1, 2021. Mud and silt from Malone pouring into Mountain Lake.



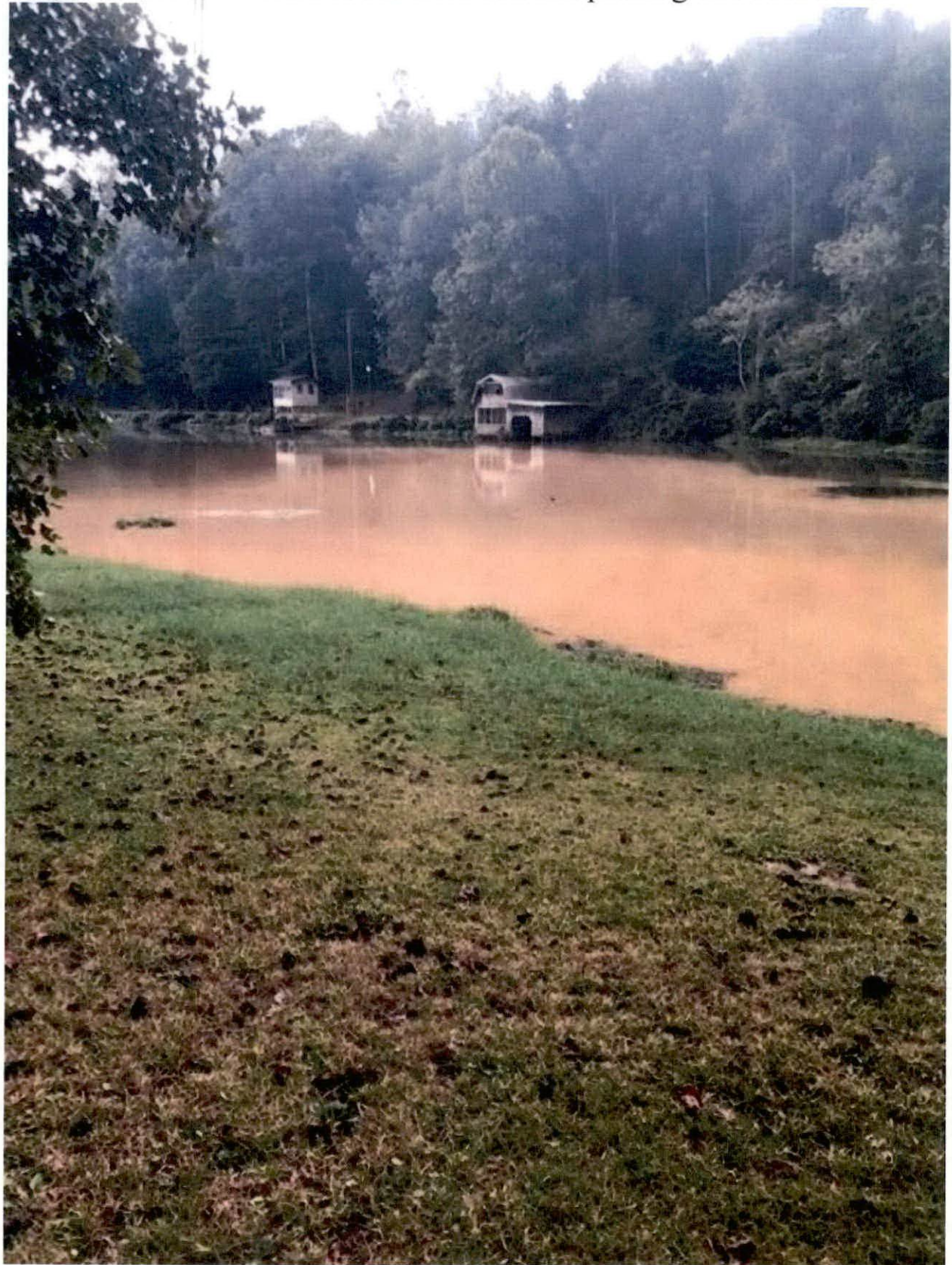
August 6, 2020. Ditch from Malone to Mountain Lake.



August 31, 2020. Ditch from Malone to Mountain Lake.



August 31, 2020. Mud and silt from Malone pouring into Mtn Lake.



January 9, 2021. Example of sediment in Mountain Lake discharged from Malone site.

