

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

CAHABA PARK DEVELOPMENT, INC.)

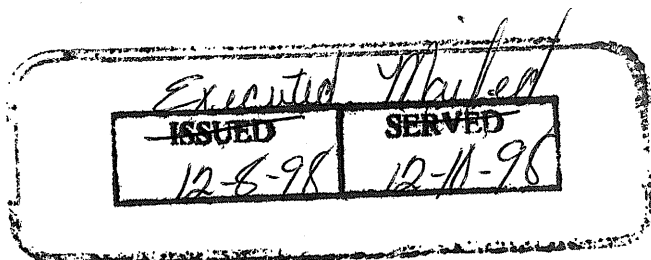
TRUSSVILLE, ALABAMA)

ORDER NO.99-024-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the regulations promulgated thereto and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1342, and without the adjudication of any issues of fact or law and upon the Consent of the parties hereto, the Department makes the following FINDINGS:

1. Cahaba Park Development, Inc. (hereinafter "the Permittee") currently operates a construction site for a residential subdivision known as Sommersby located in Trussville, Alabama.
2. The Permittee has been issued Authorization #ALR102625 by the Department which authorizes it to discharge pollutants to Turkey Creek, a water of the State classified as suitable for fish and wildlife, pursuant to NPDES General Permit #ALG610000.



3. Part II, B., 2., a.. of NPDES General Permit ALG610000 requires the Permittee to prepare and implement a Best Management Practices (BMP) plan which adequately controls, eliminates or reduces pollutants in stormwater runoff.

4. An inspection conducted by Department staff on November 22, 1996 revealed that the BMPs were not installed correctly and that a fuel tank stored on site had no containment structure. A warning letter was sent to the Permittee on December 2, 1996, and on December 15, 1996, the Permittee replied that corrections had been made.

5. On June 20, 1997, an inspection was conducted at Sommersby which revealed that BMPs were not installed in some areas and not maintained in other areas. Sediments were being channeled into an unnamed tributary of Turkey Creek and into Turkey Creek, a water of the State. On July 17, 1997, a Notice of Violation was sent to the Permittee as a result of this inspection. On August 22, 1997, the Permittee submitted a reply with an updated BMP plan and inspection reports and stated that improvements in BMPs were being made to correct problems.

6. On August 12, 1998, another inspection by Department staff revealed that BMPs were not installed in some areas and not maintained in other areas. A Notice of Violations was sent to the Permittee as a result of this inspection. On October 14, 1998, the Permittee replied that the problems noted in the inspection had been corrected.

7. Part II.C.,3. of NPDES General Permit ALG610000 requires the Permittee to display facility identification. The facility identification was not displayed at the time of the June 20, 1997 inspection.

8. The Permittee, in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and NPDES Permit requirements, has agreed to the terms of the following Consent Order.

9. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONSENT ORDER

Based upon the foregoing **FINDINGS** and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), as amended, the Department hereby **ORDERS**:

A. That not later than 14 days after the execution of this Consent Order, the Permittee shall submit to the Department a plan for the removal or stabilization of all sediments deposited off site. This plan must be designed by a credentialed, qualified professional licensed to practice in Alabama and shall ensure that there is no impairment of water quality of any waters of the State.

B. That not later than 14 days after execution of this Consent Order, the Permittee shall submit to the Department a plan for implementing appropriate permanent structural and non-structural BMPs that are adequate to prevent or minimize, to the extent possible, sediments and other pollutants in the stormwater runoff from discharging into waters of the State. This plan, at a minimum, must meet the standards found in the EPA document entitled "Stormwater Management for Construction Activities." In addition, this plan must be certified by a credentialed, qualified professional licensed to practice in Alabama. If the plan submitted to the Department is not sufficient to accomplish the aforementioned tasks, it shall be modified

immediately by the Permittee so that it does accomplish this task. This plan shall be implemented within 30 days after execution of this Consent Order.

C. That commencing immediately upon execution of this Order, the Permittee shall conduct the monthly inspections required by Part I.B.2. of NPDES General Permit #ALG610000. These inspections shall be conducted by a qualified, credentialed professional. Further, the inspection results shall be provided to the Department in inspection reports which shall be certified by the qualified, credentialed professional for accuracy and shall be submitted to the Department by the 28th day of the month following the month in which the inspection is conducted. The Department may release the Permittee from the requirements of this paragraph regarding the monthly submission of the inspection reports upon the submission of a written request for such if the Permittee is in compliance with the requirements of NPDES Permit #ALG610000 and this Consent Order for 12 consecutive months. Said request shall include copies of all data or other reports necessary to show compliance for the appropriate time period. Said release, if granted, shall not relieve the Permittee from any inspection or any other requirements imposed by NPDES General Permit # ALG610000. The Department may also release the Permittee from the requirements of this paragraph at any time if the Permittee requests termination of its coverage under this permit and the Department approves said termination.

D. That immediately upon execution of this Consent Order, the Permittee shall comply with all terms, conditions and limitations of NPDES General Permit #ALG610000.

E. That not later than 30 days after execution of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of \$2,500 for the violations cited herein. The Department may file suit in the Circuit Court of Montgomery County, Alabama, to

collect the entire unpaid amount of the penalty if the payment becomes in default and is not made before 5:00 PM of the due date.

F. 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 the Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

G. 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 alleged in this Order.

H. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. That for purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including but not limited to the Circuit Court for Montgomery County, Alabama. The Permittee also agrees in any action brought by the Department to compel compliance with the terms of the Agreement, that the Permittee shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility.

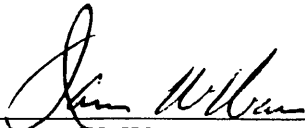
J. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Somersby site which would constitute possible violations not addressed in this Consent Order, then such future

violations shall be addressed in an Order as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation, or enforcement action based upon the issuance of this Consent Order if future Orders, litigation or other enforcement actions address new matters not raised in this Consent Order.

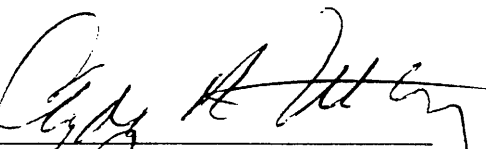

K. By agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee hereby waives any right to a conference prior to the execution of the Consent Order or any right to a hearing before the Environmental Management Commission.

ALABAMA DEPARTMENT
OF ENVIRONMENTAL
MANAGEMENT

CAHABA PARK
DEVELOPMENT, INC.

By: 
James W. Warr
Director

DATE: 8 Dec 98

By: 
Its: 
DATE: 12/7/98