

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MOBLEY DEVELOPMENT, INC.
TACOA PARC
SHELBY COUNTY, ALABAMA
ALR103239

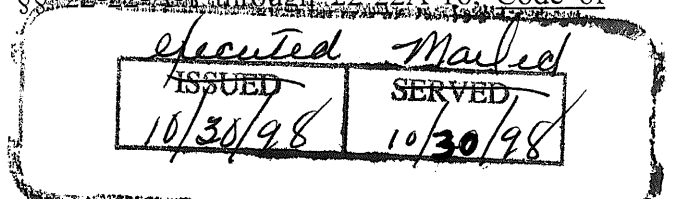
CONSENT ORDER NO. 99-016-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to -16, Code of Alabama 1975, as amended, the Alabama Water Pollution Control Act, §§ 22-22-1 to -14, Code of Alabama 1975, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System administered by the Alabama Department of Environmental Management (hereinafter, "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to § 402 of 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 concerned hereto, the Department makes the following FINDINGS:

1. Mobley Development, Inc. ("Permittee") is the company developing the Tacoa Parc site in Shelby County, Alabama. J. Stephen Mobley is the resident of Mobley Development, Inc. and the responsible party for the Tacoa Parc site. The Tacoa Parc site is located at T20S, R3W, S21.

2. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to §§ 22-22-A-1 through 22-22A-16, Code of



Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, the Department is the State water pollution control agency for the purposes of the Federal Clean Water Act, 33 U.S.C. §§ 1251 through 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. On August 29, 1997 the Department issued authorization to Mobley Development, Inc. to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR103239. The NPDES permit regulates Mobley Development, Inc.'s discharges into an unnamed tributary to Buck Creek and imposes limitations and monitoring requirements.

5. Part II, B., 2., a., of NPDES General Permit No. ALG610000 requires Mobley Development, Inc. to prepare and implement Best Management Practices ("BMP") to prevent/minimize the discharge of all sources of pollution (i.e. sediment, trash, garbage, debris, oil & grease, chemicals, materials, etc.) to State waters in storm water runoff. During inspections conducted by representatives of the Department on November 13, 1997, February 10, 1998, and May 28, 1998 the permittee was observed to be in violation of Part II, B., 2., a., of NPDES General Permit No. ALG610000. The permittee was issued Notices of Violation ("NOVs") on March 6, 1998 and June 17, 1998. During the last three inspections, a disturbed area of ground sloping down towards the unnamed tributary of Buck Creek was observed without adequate erosion and/or sediment control structures. Sediments were observed in the unnamed tributary immediately below this area.

6. Part II, B., 2., d. of General Permit ALG160000, states that the permittee must implement measures to ensure permanent re-vegetation or cover of all disturbed areas. During the November 13, 1997, February 10, 1998, and May 28, 1998 inspections it was observed that measures for permanent vegetation or cover of all disturbed areas had not been implemented, in violation of Part II, B., 2., d. of General Permit ALG160000.

7. Part II, E, 1., a. of General Permit No. ALG160000, states that it is the permittee's responsibility to comply with all conditions of the permit (ALG610000), and that any violations of the permit is a violation of the Alabama Water Pollution Control Act. During the November 13, 1997, February 10, 1998, and May 28, 1998 inspections it was observed the permittee failed to meet its responsibility of complying with all conditions of the permit, in violation of, Part II, E, 1., a. of General Permit No. ALG160000.

8. Although Mobley Development, Inc. does not agree with certain Findings in this Consent Order, it does agree in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest same. In view of the above and its desire to comply with the provisions of the Act, Mobley Development, Inc. also agrees to the terms of this Consent Order.

10. The Department has agreed to the terms of this Consent Order in order to resolve the violations alleged 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.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10) and 22-22-9, Code of Alabama 1975, as amended, and the National Pollutant Discharge Elimination System

administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That not later than thirty (30) days following the date of execution of this Consent Order, Mobley Development, Inc. shall pay to the Department a civil penalty of Two Thousand Dollars (\$2,000) in full and final settlement for the past violations cited herein.

B. That immediately upon the date of execution of this Consent Order, Mobley Development, Inc. shall implement temporary BMP's adequate to prevent sediment in storm water from leaving the construction site. Said BMP's shall also be adequate for the control of other pollutants in storm water runoff discharging into waters of the State of Alabama. Further, these BMP's shall conform to the EPA document entitled *Storm Water Management for Construction Activities*.

C. That immediately upon the date of execution of this Consent Order, and continuing thereafter, the permittee shall comply with all other terms, conditions, and limitations of the Permit.

D. That Mobley Development, Inc. shall submit within thirty (30) days of execution of this Consent Order the following:

1. 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 storm water runoff from discharging into waters of the State. This plan, at a minimum, must meet the standards found in the EPA document entitled *Storm Water 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 Mobley Development, Inc. so that it does accomplish the tasks.

Additionally, the Department may, in its sole discretion, unilaterally modify the plan to the extent necessary to accomplish those tasks. This plan shall be implemented within thirty (30) days of the date of execution of this Consent Order. For every week, following the agreed upon due date that this plan has not been submitted to the Department, Mobley Development, Inc. shall immediately pay to the Department the sum of Five Hundred Dollars (\$500.00). Payment of the stipulated penalty referenced above shall be due and made before the close of business on the Friday of each week after the certification is due to the Department but has not been received. The total stipulated penalty shall not exceed Ten Thousand Dollars (\$10,000.00).

2. A plan for the removal or stabilization of all sediments deposited off site. A full justification describing the reasons not to remove off-site sediments may be submitted if measures for off-site sediment stabilization are included. This justification must be submitted within the above-cited thirty (30) day time frame. Consideration must be given to the current integrity of the streambed, stream access and the amount of sediment discharged from the 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. Said removal or stabilization plan shall be implemented immediately after its submission to the Department and remain in effect continuing thereafter. For every week following the agreed upon due date that this plan has not been submitted to the Department, Mobley Development, Inc. shall immediately pay to the Department the sum of Five Hundred Dollars (\$500.00). Payment of the stipulated penalty referenced above shall be due and made before the close of business on the Friday of each week after the certification is due to the Department but has not been received. The total stipulated penalty shall not exceed Ten Thousand Dollars (\$10,000.00).

E. That Mobley Development, Inc. shall submit to the Department within thirty (30) days of execution of this Consent Order, certification by a credentialed, qualified professional licensed to practice in Alabama that the BMP plan has been fully implemented and is effective in controlling, minimizing or reducing sediments from entering storm water runoff from the Tacoa Parc site. Also due to be submitted to the Department within thirty (30) days from the date of execution of this Consent Order is a certification by a credentialed, qualified professional

licensed to practice in Alabama that the off-site sedimentation has been removed or stabilized. For every week following the agreed upon due date in which one of these certifications has not been submitted to the Department, Mobley Development, Inc. shall immediately pay to the Department the sum of Five Hundred Dollars (\$500.00) per certification. Payment of the stipulated penalty referenced above shall be due and made before the close of business on the Friday of each week after the certification is due to the Department but has not been received. The total stipulated penalty shall not exceed Ten Thousand Dollars (\$10,000.00).

F. That Mobley Development, Inc. shall conduct the monthly inspections required by Part I.B. 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 of the month following said inspection. The Department shall release Mobley Development, Inc. from the requirements of this paragraph, upon written request from Mobley Development, Inc., following a demonstration of compliance with all paragraphs of this Consent Order and all requirements under General Permit No. ALG610000 for twelve (12) consecutive months. Said demonstration shall include copies of all data or other reports necessary to establish compliance for the twelve (12) month time period. Said release from this paragraph, if granted, shall not relieve Mobley Development, Inc. from any inspection or any other requirement under this Consent Order or General Permit No. ALG610000.

G. That the cumulative stipulated penalties described herein this Consent Order for the late submittal of plans or certifications shall under no circumstances exceed Five Hundred

(\$500.00) in total for any calendar week. In addition the total stipulated penalty shall not exceed Ten Thousand Dollars (\$10,000). However, any other provision or term of this Consent Order notwithstanding, the stipulated penalties and limitations thereto established in this Consent Order for the violations cited herein, are applicable only to such violations that occur within twenty (20) weeks after the date of execution of this Consent Order. Violations that occur after or continue beyond twenty (20) weeks from the date of execution of this Consent Order are specifically subject to separate, additional enforcement by the Department, including the possible assessment of civil penalties.

H. Nothing in the foregoing schedule shall relieve Mobley Development, Inc. from the obligation to comply with the provisions of its permits or the Act and the regulations except as addressed by stipulated penalties. Nothing in this Consent Order shall operate to relieve Mobley Development, Inc. of any liability for any violations occurring at the facility following issuance of this Consent Order, except that no further civil penalties for the violations identified in this Consent Order shall be assessed beyond those stipulated herein.

I. That all stipulated penalties identified herein are to be paid as stipulated herein. The Department is under no obligation to notify Mobley Development, Inc. of the existence of any violations, which prompt stipulated penalties, or to demand payment of same.

J. 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.

K. 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. However, the issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against Mobley Development, Inc. for the violations identified herein.

L. That Mobley Development, Inc. not relieved from any liability if it fails to comply with any provision of this Consent Order.

M. That for purposes of this Consent Order only, Mobley Development, Inc. acknowledges that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. Mobley Development, Inc. also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, Mobley Development, Inc. shall be limited to the defenses of Force Majeure.

N. 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 in the above "FINDINGS". These allegations relate solely to the requirements of ADEM Admin. Code Div. 335-6. This Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs, or, should additional facts and circumstances be discovered in the future concerning Mobley Development, Inc. which would constitute possible violations not addressed in this Consent Order, or if the violations noted herein continue, ~~then~~ such future violations shall be addressed in other Orders as may be issued by the Department, litigation initiated by the Department, or such

other enforcement action as may be appropriate, and Mobley Development, Inc. shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

O. By agreement of the parties, this Consent Order shall be considered final and effective upon the signature of all parties. This Consent Order shall not be appealable, and Mobley Development, Inc. does hereby waive any administrative hearing on terms and conditions of same.

ORDERED and ISSUED executed in duplicate, each part being an original this the 30th day of October, 1998.

MOBLEY DEVELOPMENT, INC.

By: Steven Mobley

DATE: 10/27/98

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Maury Elliott

Director

DATE: 10/30/98