

LANCE R. LeFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

February 22, 2012

CERTIFIED MAIL

Randy Nelson
32 Nelson Drive
Childersburg, AL 35044

RE: Final Consent Order No 12-076-CWP
Unpermitted FID 44423.1
Talladega County (121)

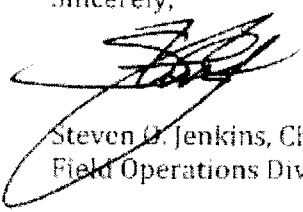
Dear Mr. Nelson:

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 Randy Nelson.

The enclosed Special Order by Consent is effective immediately. Please note that his Consent Order does not assess a civil penalty.

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

Sincerely,


Steven G. Jenkins, Chief
Field Operations Division

SOJ/deh

File: ECO/XXX

Enclosure

cc: Thomas L. Johnston, ADEM
Valerie Jackson, ADEM
Scott Hughes, ADEM
Birmingham Branch, ADEM



Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1600 (FAX)

Decatur Branch
7715 Sandlin Road, S.W.
Decatur, AL 35613-1333
(256) 303-1713
(256) 443-9353 (FAX)

Mobile Branch
2206 Perimeter Road
Mobile, AL 36615-1131
(251) 456-2400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commander Drive
Mobile, AL 36615-1421
(251) 452-6673
(251) 452-8536 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

RANDY NELSON)

NELSON DRIVE SITE)

CHILDERSBURG, T20S, R3E, S20)

TALLADEGA COUNTY, ALABAMA)

UNPERMITTED FID 44423.1)

ORDER 12-076-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Randy Nelson (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Operator is an individual developing lots located at the Nelson Drive Site (hereinafter "Facility") located on Nelson Drive, T20S, R3E, S20, in Childersburg, Talladega County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary to the Coosa River, 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, (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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. 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 (2006 Rplc. Vol.).

4. The following references and acronyms are used in this Order and, when used, shall have the meaning of the name or title referenced below.

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary
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 NOI in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. During an inspection of the Facility on December 5, 2011, the Department documented that the Operator had not registered for and obtained NPDES coverage and that regulated disturbance activities and/or discharges were occurring in violation of ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1).

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 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 December 5, 2011, inspection of the Facility, the Department documented that the Operator had not properly implemented and maintained effective BMPs,

although NPDES construction activity 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 discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

10. During the December 5, 2011, inspection of the Facility, the Department documented accumulations of sediment resulting from discharges at the Facility had been deposited offsite, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

11. On December 14, 2011, a WL was sent to the Operator by the Department as a result of the December 5, 2011 inspection. The WL notified the Operator of deficiencies documented at the Facility. The WL also required the Operator to submit to the Department a written report showing steps that were taken at the Facility to correct the noted violations and to submit a complete and correct NOI, including all appropriate fees. Both the written report and the NOI were due to the Department within ten days of receipt of the WL. The required report and NOI have not been received by the Department.

12. The Operator violated Ala. Code § 22-22-9(e) by failing to respond to the WL within the specified time period.

13. The Operator consents to abide by the terms of the following Consent Order.

14. 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.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. 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 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.

B. The Operator agrees that, within five days of receipt of this Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

C. The Operator agrees, within ten days after the effective date 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/>.

D. The Operator agrees that, within thirty days of receipt of this 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.

E. The Operator agrees that, within seven days of the completion of the activities required in D 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.

F. The Parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The Parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, the Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Operator, including the Operator's contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Operator) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Operator, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

J. The Parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances

referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Operator shall not object to such future Orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. The Parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.

L. The Parties agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

M. The Parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

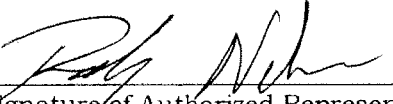
N. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

O. The Parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

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

Executed in duplicate with each part being an original.

RANDY NELSON

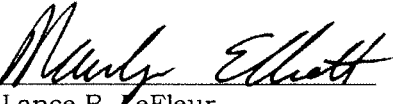

(Signature of Authorized Representative)

Randy Nelson
(Print Name of Authorized Representative)

SELF
Title

Date Signed: 2/15/2012

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. LeFleur
Director

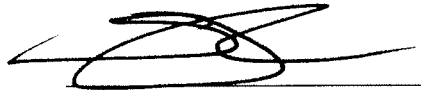
Date Signed: 2/22/2012

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Steven O. Jenkins, do hereby certify that I have served the executed Consent/Administrative Order Number 12-076-CWP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt # 91 7108 2133 3935 0334 4485, with instruction to forward and return receipt, to:

**RANDY NELSON
32 NELSON DRIVE
CHILDERSBURG, AL 35044**

Done this 22nd of February, 2012.

A handwritten signature in black ink, appearing to be 'S. O. Jenkins', written over a horizontal line.

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