

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

M. FORD WATERS)
LAKEHOUSE APARTMENTS)
BIRMINGHAM, ALABAMA)
)

ORDER NO. 97-207-CWP

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. M. Ford Waters (hereinafter, "WATERS") is the development manager and responsible party for the Lakehouse Apartments site. Lakehouse Apartments is an apartment construction site located in Jefferson County, Birmingham, Alabama.

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.

executed mailed
9/16/97 9/16/97

3. On November 18, 1994, the Department issued authorization to WATERS to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR 101843. The NPDES permit regulates WATERS' discharges directly to Patton Creek and imposes limitations and monitoring requirements.

4. Part II, B., 2., a., of NPDES General Permit No. ALG610000 requires the permittee to prepare and implement Best Management Practices ("BMP") which adequately controls, eliminates, or reduces pollutants in stormwater runoff.

5. On January 22, 1996, an inspection was conducted at Lakehouse Apartments, and Department personnel determined that BMPs were not being maintained and that sediments were leaving the site. A Warning Letter was sent to the permittee, as a result of this inspection. On March 26, 1996, the permittee replied to the Warning Letter stating that BMPs were being improved and that this would continue throughout the project.

6. On October 7, 1996, an inspection was conducted at Lakehouse Apartments, and it was found that the BMPs were not being maintained. The site had serious erosion problems, and sediments were deposited in areas that will eventually discharge into Patton Creek. A Notice of Violation ("NOV") was sent to the permittee on October 29, 1996. On November 14, 1996, a reply was sent to the Department stating that there were problems with the contractor on the site and a new contractor had been hired. The permittee stated that the problems with the BMPs and the sediments leaving the site would be corrected by December 1, 1996.

7. A follow-up inspection was conducted on January 21, 1997. Department personnel determined that adequate BMPs had not been implemented. The erosion and sediment problems remain ongoing. A second NOV was sent to the permittee on February 24, 1997. This NOV required the permittee to file with the Department a full report signed by the owner and a

credentialed, qualified professional. The report, at a minimum, was to include: (1) an updated design and construction plan for the site including a comprehensive, long-term BMP plan detailing the structural and nonstructural practices to be implemented and maintained, and (2) a plan for the stabilization and/or removal of sediments deposited offsite and in State waters.

8. The permittee replied on March 27, 1997, stating that corrections to BMPs would be made by April. The permittee did not submit a full report prepared and certified by a credentialed, qualified professional in erosion control as requested by the Department in a NOV dated February 24, 1997.

9. WATERS understands that this Consent Order addresses only those violations of the Department's Water Program covered in ADEM Admin. Code Div. 335-6 and identified in these FINDINGS. Potential violations of other regulatory programs administered by the Department are reserved from this Consent Order.

10. Although WATERS 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, with no admission of liability. In view of the above and its desire to comply with the provisions of the Act, WATERS also agrees to the terms of this Consent Order.

11. 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, WATERS shall pay to the Department Two Thousand Five Hundred Dollars (\$2,500) in full and final settlement for the past violations cited herein.

B. That the permittee shall submit within fourteen (14) days of the execution of this Consent Order, 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.

C. The permittee shall submit within fourteen (14) days of execution of this Consent Order, 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 the task. This plan shall be implemented within thirty (30) days of the execution of this Consent Order.

D. That the permittee shall submit to the Department within forty-five (45) 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.

E. That in addition to the fixed penalties assessed herein, WATERS shall pay stipulated penalties to the Department as follows: for every week after the above-mentioned fourteen-day period that the permittee fails to submit a plan as aforementioned designed by a credentialed, qualified professional, the permittee shall pay \$500.00 per week, not to exceed \$10,000.00. Total payment of said penalty shall be due seven (7) calendar days after the due date of the plan.

F. Nothing in the foregoing schedule shall relieve WATERS 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 WATERS 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 in paragraph E herein.

G. That all stipulated penalties identified herein are to be paid as identified in paragraph E herein. The Department is under no obligation to notify WATERS of the existence of any violations which prompt stipulated penalties or to demand payment of same.

H. 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.

I. 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 WATERS for the violations identified herein.

J. That WATERS is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. That for purposes of this Consent Order only, WATERS 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. WATERS also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, WATERS shall be limited to the defenses of Force majeure.

L. 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 WATERS 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 WATERS shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

M. 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 WATERS 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
16th day of September, 1997.

M. FORD WATERS
LAKEHOUSE APARTMENTS

By: m. f d walters

DATE: Sept. 12, 1997

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: John Wilson
Director

DATE: 16 Sep 97