

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

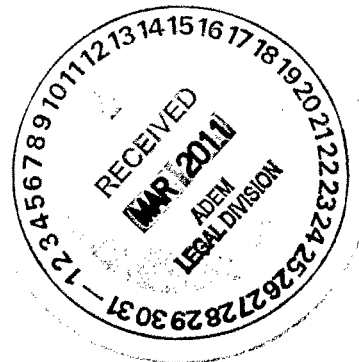
1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

March 10, 2011

**CERTIFIED MAIL # 91 7108 2133 3936 5739 3018**  
**RETURN RECEIPT REQUESTED**

Dr. John Wisda  
New Castle Development  
P.O. Box 100  
Madison, AL 35758

RE: Administrative Order  
NPDES No. ALR16A496  
Madison County (089)  
Kelly Plantation



Dear Dr. Wisda:

Please find enclosed an Administrative Order which requires you to take certain actions at the above referenced facility in regard to alleged violations of the Alabama Water Pollution Control Act, including cessation of all regulated activity except as needed to address the alleged violations. The Unilateral Order has been issued without the consent of the responsible parties. This order does not assess a civil penalty.

Pursuant to §§22-22A-(7)(c)1, Code of Alabama (1975), as amended, this Order may be appealed by filing a request for a hearing within 30 days after receiving notice of this Order. The request should be addressed to the Chair of the Environmental Management Commission and must comply with the requirements of ADEM Admin. Code r. 335-2-1-.04, copies of which may be obtained by submitting a written request to the attention of Molly Tatum, ADEM-Office of General Counsel. Rule 335-2-1-.04 is also available online at the Department's website at <http://www.adem.state.al.us/alEnviroRegLaws/files/Div2Eff5-26-09.pdf>.

If you have questions regarding this matter, please contact Katie Smith at (334) 271-7850.

Sincerely,

*Glenda L. Dean*

Glenda L. Dean, Chief  
Water Division



GLD/abn

Enclosure

cc: Thomas L. Johnston, ADEM  
Valerie Jackson, ADEM  
Scott Hughes, ADEM  
Chip Crockett, ADEM

Dale P. Mapp, ADEM  
Katie Smith, ADEM  
Cesar Zapata, USEPA Region 4

**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**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

NEW CASTLE DEVELOPMENT, INC  
KELLY PLANTATION  
HARVEST, T2S, R2W, S27,  
MADISON COUNTY, ALABAMA  
NPDES REGISTRATION NO. ALR16A496

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) ORDER 11-063-WP  
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FINDINGS

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.), the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management [hereinafter "Department"] makes the following FINDINGS:

1. New Castle Development, Inc. (hereinafter "Operator") is an Alabama developer constructing the residential development Kelly Plantation (hereinafter "Facility") located in T2S, R2W, S27, at the southwest corner of Jeff Road and Ford Chapel Road, in Harvest, Madison 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 Dry Creek and an unnamed tributary to Love Ditch, both waters 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 22-22-14 (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
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
WL	Warning Letter

5. 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").

6. 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.

7. During an inspection of the Facility on July 2, 2010, the Department documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code r. 335-6-12-.21(1).

8. In addition, during the July 2, 2010, inspection, significant accumulations of sediment resulting from discharges at the Facility were observed by the Department offsite, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

9. On July 12, 2010, a WL was sent to the Operator by the Department as a result of the July 2, 2010, inspection. The WL notified the Operator of the areas of concern noted

during the inspection and required the Operator to submit to the Department, within thirty days of receipt of the WL, confirmation detailing how and when corrective action was taken to address the areas of concern. The confirmation has not been received by the Department.

10. The Department inspected the Facility on August 25, 2010, and documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code r. 335-6-12-.21(1).

11. In addition, during the August 25, 2010, inspection, significant accumulations of sediment resulting from discharges at the Facility were observed by the Department offsite, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

12. Ala. Code § 22-22-9(e) requires an operator to respond within the specified time frame to a notice of violation or non-compliance by the Department.

13. On August 31, 2010, an NOV was sent to the Operator by the Department as a result of the August 25, 2010, inspection. The NOV notified the Operator of violations documented at the Facility, and required the Operator to submit to the Department, within thirty days of receipt of the NOV, a report prepared by a QCP showing steps that were taken at the Facility to correct the noted violations. The Department received the required report on November 15, 2010. The Operator did not respond to the NOV within the specified time frame, in violation of Ala. Code § 22-22-9(e).

14. The Department inspected the Facility on October 20, 2010, and documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code r. 335-6-12-.21(1).

15. In addition, during the October 20, 2010 inspection, significant accumulations of sediment resulting from discharges at the Facility were observed by the Department offsite, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

16. The Department inspected the Facility on February 2, 2011 and documented that, although NPDES construction activity had commenced and was continuing, the Operator had

not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code r. 335-6-12-.21(1).

17. In addition, during the February 2, 2011, inspection, significant accumulations of sediment resulting from discharges at the Facility were observed by the Department offsite, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

#### ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That the Operator shall **IMMEDIATELY CEASE** all operation of the NPDES construction site, and related activity at the Facility other than BMP implementation / maintenance, and sediment removal / remediation. Construction and related activity other than BMP implementation / maintenance, and sediment removal / remediation is not authorized to resume until approved in writing by the Department.

B. 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.

C. That the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

D. That within fifteen days of receipt of this Order by the Operator, the Operator shall submit to the Department a CBMPP, prepared/certified by a QCP, detailing effective BMPs that will be implemented and continually maintained to prevent/minimize the discharge of all sources of pollutants, including but not limited to, sediment, construction waste, oil & grease, chemicals, and other pollutants. The CBMPP and any BMPs shall meet or exceed the technical standards outlined in ADEM Admin. Code chap. 335-6-12 and Alabama Handbook. The Operator shall update the CBMPP to correct any deficiencies identified by the Department.

E. That the Operator shall submit to the Department all records of QCP/QCI inspections performed at the Facility as required by ADEM Admin. Code r. 335-6-12-.28 since June 8, 2008.

F. That the Operator shall remove / remediate, to the maximum extent practicable, all sediment and other pollutants deposited offsite, in any waterbody, or stormwater conveyance structure.

G. That 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 as revised to correct any deficiencies identified by the Department, and ADEM Admin. Code chap. 335-6-12 have been implemented, all deficiencies have been corrected, all offsite sediment / pollutants have been removed / remediated, 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.

H. That this Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

I. That, should any provision of this 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.

J. That, except as otherwise set forth herein, this 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.

K. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

L. That failure to comply with the provisions of this Administrative Order within sixty days from receipt of this Order by the Operator, 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.

ORDERED and ISSUED this 10<sup>th</sup> day of March, 2011.

A handwritten signature in black ink, appearing to read "Lance R. LeFleur", is written over a horizontal line.

Lance R. LeFleur, Director  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, AL 36110-2059  
(334) 271-7700

**ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE**

I, Glenda L. Dean, do hereby certify that I have served the executed Administrative Order 11-063-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt # 91 7108 2133 3936 5739 3018, with instructions to forward and return receipt, to:

Dr. John Wisda  
New Castle Development  
P.O. Box 100  
Madison, AL 35758

Done this 10<sup>th</sup> day of March, 2011.

Glenda L. Dean

Glenda L. Dean, Chief  
Water Division  
Alabama Department of Environmental Management



**Jackson, Valerie**

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**From:** U.S. Postal Service\_ [U.S. Postal\_Service@usps.com]  
**Sent:** Monday, March 14, 2011 1:48 PM  
**To:** Jackson, Valerie  
**Subject:** USPS Shipment Info for 7108 2133 3936 5739 3018

This is a post-only message. Please do not respond.

Valerie Jackson has requested that you receive a Track & Confirm update, as shown below.

Track & Confirm e-mail update information provided by the U.S. Postal Service.

Label Number: 7108 2133 3936 5739 3018

Service Type: First-Class Certified Mail

Shipment Activity	Location	Date & Time
Delivered	MADISON AL 35758	03/14/11 12:37pm
Notice Left	MADISON AL 35758	03/12/11 4:06pm
Arrival at Unit	MADISON AL 35758	03/12/11 8:27am
Electronic Shipping Info Received		03/10/11

Reminder: Track & Confirm by email

Date of email request: 03/10/11

Future activity will continue to be emailed for up to 2 weeks from the Date of Request shown above. If you need to initiate the Track & Confirm by email process again at the end of the 2 weeks, please do so at the USPS Track & Confirm web site at <http://www.usps.com/shipping/trackandconfirm.htm>

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USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

## Jackson, Valerie

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**From:** U.S.\_Postal\_Service\_[U.S.\_Postal\_Service@usps.com]  
**Sent:** Saturday, March 12, 2011 4:41 PM  
**To:** Jackson, Valerie  
**Subject:** USPS Shipment Info for 7108 2133 3936 5739 3018

This is a post-only message. Please do not respond.

Valerie Jackson has requested that you receive a Track & Confirm update, as shown below.

Track & Confirm e-mail update information provided by the U.S. Postal Service.

Label Number: 7108 2133 3936 5739 3018

Service Type: First-Class Certified Mail

Shipment Activity	Location	Date & Time
Notice Left	MADISON AL 35758	03/12/11 4:06pm
Arrival at Unit	MADISON AL 35758	03/12/11 8:27am
Electronic Shipping Info Received		03/10/11

Reminder: Track & Confirm by email

Date of email request: 03/10/11

Future activity will continue to be emailed for up to 2 weeks from the Date of Request shown above. If you need to initiate the Track & Confirm by email process again at the end of the 2 weeks, please do so at the USPS Track & Confirm web site at <http://www.usps.com/shipping/trackandconfirm.htm>

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USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

*Newcastle Dev.*  
*11-063-WP*  
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