

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

RIVER OAKS, LLC
4922 STONEHEDGE ROAD
BIRMINGHAM, AL 35242
ALR105763

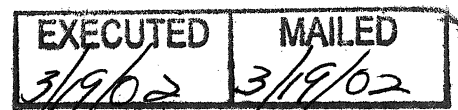
CONSENT ORDER NO. 02-123-CMNPS

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. River Oaks, LLC ("River Oaks" or "Permittee") is the permittee and responsible party for the Riverwoods subdivision site in Shelby, County, Alabama. Mr. Ronnie Morton is the registered agent and responsible party for the Riverwoods subdivision site. The site is located at T20S, R3W, S17, 20.

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 July 15, 1997, the Department issued authorization to River Oaks to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number to discharge pollutants under the provisions of ALG610000 is ALR105763. The NPDES permit regulates River Oaks' discharges into the Cahaba River, and an unnamed tributary to the Cahaba River and imposes limitations and monitoring requirements.

5. Part I, 3, (a)., of NPDES General Permit No. ALG610000 states, "Pursuant to ADEM Admin. Code R. 335-6-10, discharges or activities which for any reason cause substantial visible contrast or interfere with the beneficial use(s) of state waters, or that cause instream turbidity to exceed background or upstream turbidity by more than 50 n.t.u. after reasonable opportunity for mixing has been afforded may be violations of this permit and may result in an enforcement action against the permittee."

Samples for turbidity were collected upstream of the site, at the site discharge, and downstream on February 13, 2001, from an unnamed tributary to the Cahaba River. Analytical sampling results indicated an upstream turbidity of 11.3 n.t.u., and a downstream turbidity of 147 n.t.u., establishing a variance of 133.7 n.t.u., in violation of Part I, A., 3., a., of NPDES General Permit No. ALG610000.

6. Part II, B., 2., a., of NPDES General Permit No. ALG610000 requires River Oaks to prepare and implement a comprehensive Best Management Practices ("BMP's") plan 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 an inspections conducted by representatives of the Department at the site on February 13, 2001, May 20, 2001, July 24, 2001, and August 31, 2001, the Permittee was observed to be in violation of Part II, B., 2., a., of NPDES General Permit No. ALG610000. Specifically, on February 13, 2001, a water quality violation was documented. Further it was observed during the inspection that appropriate, effective BMPs for the control of pollutants in storm water run-off had not been properly implemented. The Permittee was issued Notices of Violation ("NOVs") for the above-referenced violations on the following date(s), March 13, 2001, and August 13, 2001. The Permittee was issued Warning Letters ("WLs") for the above-referenced violations on the following date(s), May 11, 2001, and July 25, 2001. A response from the Permittee stated BMPs were being properly implemented and maintained.

7. Part II, E, 1., a. of General Permit No. ALG610000, 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 above-cited inspections 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. ALG610000. The Permittee was issued a NOV for the above-referenced violations on the following dates, March 13, 2001, and August 13, 2001. The Permittee was issued Warning Letters ("WLs") for the above-referenced violations on the following date(s), May 11, 2001, and July 25, 2001.

8. Although River Oaks, may 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, River Oaks, also agrees to the terms of this Consent Order.

9. 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, River Oaks shall pay to the Department a civil penalty of Five Thousand Dollars (\$5,000.00) in full and final settlement for the past violations cited herein.

B. That immediately upon execution of this Consent Order, River Oaks, 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 execution of this Consent Order, and continuing thereafter, the Permittee shall comply with all other terms, conditions, and limitations of the Permit.

D. That River Oaks, shall submit within fourteen (14) days from the date 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 River Oaks 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 fourteen (14) days from the date of execution of this Consent Order.
2. A plan for the removal of all sediments from this site that are deposited in waters of the State. This plan must include the methods and areas of sediment removal. A full justification describing the reasons not to remove sediments may be submitted provided measures for sediment stabilization are included. This justification must be submitted to the Department within the above time frame. Consideration must be given to the current integrity of the streams' beds, streams' accesses and the amount of sediment discharged from the site.

E. That River Oaks shall submit to the Department within thirty (30) days from the date of execution of this Consent Order, certification by a credentialed, qualified professional licensed to practice in Alabama that the BMP plan and sediment removal have been fully implemented and are effective in controlling, minimizing or reducing sediments from entering storm water runoff from the Riverwoods subdivision site.

F. That River Oaks 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 may release River Oaks from the requirements of this paragraph, upon written request from River Oaks 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 River Oaks from any inspection or any other requirement under this Consent Order or General Permit No. ALG610000.

G. For every week after the due date in which these certifications and plans have not been submitted to the Department, the Permittee shall pay to the Department the sum of Five Hundred Dollars (\$500.00). Payment of said penalty shall be due before close of business on Friday of each week after the certification or plan is due to the Department but has not yet been submitted. The cumulative stipulated penalties described in this Consent Order for late submittal of plans or certifications shall under no circumstances exceed Five Hundred Dollars (\$500.00) in total for any calendar week. In addition, the total stipulated late penalties shall not exceed Ten Thousand Dollars (\$10,000.00).

H. That nothing in the foregoing schedule shall relieve River Oaks 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 River Oaks of any liability for any violations occurring at the facility following issuance of this Consent Order.

I. 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.

J. 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. However, the issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against River Oaks for the violations identified herein.

K. That River Oaks is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. That for purposes of this Consent Order only, River Oaks 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. River Oaks also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, River Oaks shall be limited to the defenses of compliance with this Consent Order and/or Force Majeure.

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

N. That 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 River Oaks 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 19th

day of March, 2002.

RIVER OAKS, LLC

By: Rennie Math

DATE: 3/12/02

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Jim Wilson
Director

DATE: 19 March 2002