ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF ODENVILLE/I-59, LLC MARKETPLACE AT LEGACY SPRINGS ODENVILLE, T14S, R2E, S32 ST CLAIR COUNTY, ALABAMA NPDES AUTHORIZATION NO. ALR10B294	)	CONSENT ORDER 16-XXX-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Odenville/I-59, LLC (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 (2006).

STIPULATIONS

1. The Operator is a domestic limited liability company and Alabama developer which is constructing a commercial development, Market Place at Legacy Springs (hereinafter "Facility") located off of Highway 174 in Odenville, St Clair County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Little Canoe Creek, 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. and 2014 Cum. Supp.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol. and 2014 Cum. Supp.), 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 (2006). 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. and 2014 Cum. Supp.).

4. The following references and acronyms are used in this Consent 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
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional

5. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On August 18, 2015, the Operator submitted to the Department an NOI requesting NPDES coverage under NPDES General Permit ALR100000 (hereinafter "Permit") for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted authorization ALR10B294 to the Operator on September 11, 2015. The Permit expired on March 31, 2016. On March 31, 2016, the Operator submitted an NOI for reissuance of authorization ALR10B294. The new Permit is scheduled to expire on March 31, 2021.

7. Pursuant to Part III. A. of the Permit, the Permittee shall design, install, and maintain effective erosion controls and sediment controls, appropriate for site conditions. Sediment control measures, erosion control measures, and other site management practices must be properly selected based on site-specific conditions, must meet or exceed the technical standards outlined in 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") and the site-specific CBMPP prepared in accordance with Part III. D.

8. Pursuant to Part III. D. of the Permit, construction activity may not commence until a CBMPP has been prepared in a format acceptable to the Department and certified by a QCP as adequate to meet the requirements of this permit. The Permittee shall properly implement and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.

9. During an inspection of the Facility on March 7, 2016, the Department observed and documented that the Operator had not properly implemented and maintained effective BMPs, although NPDES construction activity had commenced and was continuing, in violation of Parts III. A. and D. of the Permit.

10. Pursuant to Part III. H. 3. of the Permit, the Permittee shall promptly take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.

11. During the March 7, 2016 inspection, significant accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department offsite, in violation of Part III. H. 3. of the Permit.

12. Pursuant to Part III. G. 2. (c) of the Permit, for non-linear projects, the Permittee shall perform a site inspection once each month and after any qualifying precipitation event, commencing as promptly as possible, but no later than 24-hours after resuming or continuing active construction or disturbance, and completed no later than 72-hours following the qualifying precipitation event.

13. During March 7, 2016, inspection, the Department documented that the Operator had not conducted monthly inspections, nor had they conducted the required inspections after qualifying precipitation events, in violation of Part III. G. 2. (c) of the Permit.

14. On March 22, 2016, a NOV was sent to the Operator by the Department as a result of the March 7, 2016, inspection.

15. The Operator neither admits nor denies the Department's allegations. The Operator consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

16. 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.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol. and 2014 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed $25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed $250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: Considering the general nature of the violations, the magnitude and duration of the violations, their effects, if any on impaired waters, and lack of any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be $11,200.00.

B. THE STANDARD OF CARE: In considering this factor, the Department noted the substantial off-site environmental impacts. In consideration of the standard of care by the Operator, the Department enhanced the penalty by $5,600.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator has delayed certain costs associated with maintaining proper BMPs and conducting site inspections. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional $300.00.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any previous violations not addressed above.

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

G. It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol. and 2014 Cum. Supp.), as well as the need for timely and effective enforcement.

The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator (hereinafter collectively, "Parties") agree to enter into this Consent Order with the following terms and conditions:

A. That the Operator shall pay to the Department a civil penalty in the amount of $11,000.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. That all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

C. 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.

D. That, within five days of the date of issuance of this Consent Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. That, within ten days of the date of issuance of this Consent Order, the Operator shall submit to the Department the results of the QCP comprehensive inspection and a plan to return the Facility, offsite conveyances, and affected State waters to compliance with Permit requirements.

F. That, within thirty days of the date of issuance of this Consent 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 NPDES General Permit ALR100000, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

G. That, within seven days of the completion of the activities required in paragraph F 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 NPDES General Permit ALR100000 have been implemented, all deficiencies have been corrected, and full compliance with the requirements of NPDES General Permit ALR100000, has been achieved at the Facility, offsite conveyances, and affected State waters.

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. 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.

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

K. That, for purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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.

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 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.

M. 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.

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

O. That final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

P. 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.

Q. That any modifications of this Consent Order must be agreed to in writing and signed by both Parties.

R. 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.

This Consent Order is executed in duplicate with each part being an original.

ODENVILLE/I-59, LLC

_____
(Signature of Authorized Representative)

CRAIG ATCHISON
(Print Name of Authorized Representative)

MANAGER OF MANAGING MEMBER
Title

Date Signed: 5/18/16

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

_____
Lance R. LeFleur
Director

Date Signed:_____

ATTACHMENT 1 - PENALTY SYNOPSIS

Odenville/I-59, LLC - Market Place at Legacy Springs Odenville, St. Clair County NPDES ALR10B294

Violation	Number of Violations	Seriousness of Violation & Base Penalty	Standard of Care	History of Previous Violations
Effective Best Management Practices (BMPs) not implemented and/or maintained	1	$3,000	$1,500	$0
Discharge/accumulation of sediment offsite	1	$5,000	$2,500	$0
Adequate records not maintained	1	$100	$50	$0
Required inspection not performed by operator	6	$3,000	$1,500	$0
Rainfall data not available	1	$100	$50	$0
Totals:	**10**	**$11,200**	**$5,600**	**$0**

Economic Benefit*:	**$300**
Sub-Total:	**$17,100**
Mitigating Factors*:	
Ability to Pay*:	
Other Factors*:	
Amount of Initial Penalty:	**$17,100**
Total Adjustments:	**($6,100)**
Final Penalty:	**$11,000**

*See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.