

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
JON D. PIERCE) ORDER 25-XXX-LD
CHELSEA FARMS – LOT 1)
CHELSEA, T20S, R1W, S21)
SHELBY COUNTY, ALABAMA)
NPDES AUTHORIZATION NO. ALR10COQP)

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, as amended, the Alabama Department of Environmental Management [hereinafter “Department”] makes the following FINDINGS:

1. The Operator is the sole proprietor of the Chelsea Farms residential Development. The Operator is constructing the residential development Chelsea Farms – Lot 1 (hereinafter “Facility”) located on Chelsea Farms Road in Chelsea, Shelby County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to South Fork Yellowleaf 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, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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, as amended. 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, as amended.

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
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 submit to the Department an NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On April 27, 2021, 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 ALR10COQP to the Operator on May 21, 2021. General Permit ALR100000 is scheduled to expire on March 31, 2026.

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. E.

8. During inspections of the Facility on March 4, 2024, and April 26, 2024, 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.

9. Pursuant to Part III. I. 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.

10. During the March 4, 2024, and April 26, 2024, inspections, significant accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department offsite, in violation of Part III. I. 3. of the Permit.

11. On March 25, 2024, an NOV was sent to the Operator by the Department as a result of the March 4, 2024, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department a report prepared by a QCP showing steps that were taken at the Facility to correct the noted violations within thirty days of receipt of the NOV. The required report has not been received by the Department.

12. On May 3, 2024, an NOV Non-Compliance letter was sent to the Operator by the Department as a result of the April 26, 2024, inspection. A response has not been received by the Department.

13. Pursuant to Ala. Code § 22-22A-5(18)c. *as amended*, 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 twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$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 \$24,000.00.

B. THE STANDARD OF CARE: In considering this factor, the Department noted the substantial off-site environmental impacts to adjacent property, and the continued violations after previous enforcement. In consideration of the standard of care by the Operator, the Department enhanced the penalty by \$4,000.00.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator delayed certain costs associated with maintaining proper BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional \$200.00.

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 unaware of any violations not otherwise 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. The civil penalty is summarized in Attachment 1.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, it is hereby ORDERED:

A. That, within forty-five days of receipt of this Order, the Operator shall pay to the Department a civil penalty in the amount of \$28,200.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days after receipt 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 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 issuance of this 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 receipt of this 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 issuance 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 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 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 Order does not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

I. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

J. 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.

K. 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.

L. That 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.

ORDERED and ISSUED this _____ day of _____, _____.

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

ATTACHMENT 1 - PENALTY SYNOPSIS

JON D. PIERCE - CHELSEA FARMS-LOT 1 Chelsea, Shelby County NPDES
ALR10C0QP

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	2	\$9,000	\$1,500	
Discharge/accumulation of sediment offsite	1	\$7,500	\$1,250	
Failure to respond to a Notice of Violation	2	\$7,500	\$1,250	
Totals:	5	\$24,000	\$4,000	
Economic Benefit*:				\$200
Sub-Total:				\$28,200
Mitigating Factors*:				
Ability to Pay*:				
Other Factors*:				
Amount of Initial Penalty:				\$28,200
Total Adjustments:				
Final Penalty:				\$28,200

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