

IN THE MATTER OF

CONSENT ORDER 25-XXX-CLD

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Bess Homes & Enterprises, LLC (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, as amended.

1. The Operator is an Alabama Limited Liability Company (LLC) that is registered with the Alabama Secretary of State's Office. The Operator is constructing the private residential development The Ranches at Shelby Lakes-Lot 13 (hereinafter "Facility") located adjacent to Ironwood Ct, in Shelby, Shelby County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an UT to Beaver 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 22-22A-14, as amended.

4. On July 29, 2024, the Department entered into Consent Order No. 24-094-CLD with the Operator addressing violations of the Permittee's NPDES permit, the Alabama Water Pollution Control Act, and its implementing regulations. Said Consent Order required the Operator to comply and continue to comply with all terms, conditions and limitations of its NPDES Permit.

5. Due to several issues, the Permittee requested, and the Department agreed to an extension of time for payment of the civil penalty.

6. 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.

7. 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., 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 \$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 \$31,500.00.

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 enforcements. 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 \$400.00.

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 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. OTHER FACTORS: 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), as amended, 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 paragraph B of Consent Order No. 24-094-CLD shall be deleted in its entirety and in its stead shall be substituted the following:

As an alternative to Paragraph A of Consent Order No. 24-094-CLD, the Operator agrees to pay the \$25,000.00 penalty assessed herein according to the schedule in the below table. The Operator further agrees that, in the event the Operator fails to comply with

any of the requirements of this Consent Order within the time provided, the remainder of the full assessed penalty shall become immediately due and payable.

Payment Number	Amount	Due Date
#1	\$2,500.00	July 1, 2025
#2	\$2,000.00	August 1, 2025
#3	\$2,000.00	September 1, 2025
#4	\$2,000.00	October 1, 2025
#5	\$2,000.00	November 1, 2025
#6	\$2,000.00	December 1, 2025
#7	\$2,000.00	January 1, 2026
#8	\$2,000.00	February 1, 2026
#9	\$2,000.00	March 1, 2026
#10	\$2,000.00	April 1, 2026
#11	\$2,000.00	May 1, 2026
#12	\$2,500.00	June 1, 2026
TOTAL	\$25,000.00	

That the Permittee shall comply and remain in compliance with all terms, conditions and limitations of the Permit.

B. That all other terms and conditions of Consent Order No. 24-094-CLD shall remain in full force and effect.

C. 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

D. 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.

E. 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.

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

G. 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.

H. 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.

I. 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.

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

K. 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.

L. 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.

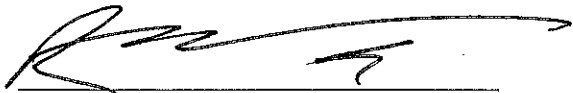
M. That any modifications of this Consent Order must be agreed to in writing and signed by both Parties.

N. 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.

Executed in duplicate, with each part being an original.

BESS HOMES & ENTERPRISES, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

ROBERT C. BESS SR.

(Print Name of Authorized Representative)

Date Signed: _____

MANAGER

Title

Date Signed: 2 May 2025

ATTACHMENT 1 - PENALTY SYNOPSIS

BESS HOMES & ENTERPRISES, LLC THE RANCHES AT SHELBY LAKES-LOT 13 Shelby, Shelby County NPDES ALR10C4PU

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operating an NPDES construction site without, or outside of, NPDES coverage.	1	\$7,500		
Effective Best Management Practices (BMPs) not implemented and/or maintained	2	\$9,000	\$1,500	
Discharge/accumulation of sediment offsite	2	\$15,000	\$2,500	
Totals:	5	\$31,500	\$4,000	
Economic Benefit*:				\$400
Sub-Total:				\$35,900
Mitigating Factors*:				
Ability to Pay*:				
Other Factors*:				
Amount of Initial Penalty:				\$35,900
Total Adjustments:				-\$10,900
Final Penalty:				\$25,000

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