

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

THE MEADOWS DEVELOPMENT, INC.)
BIRMINGHAM, ALABAMA)
ALG610000)
ALR101185)
_____)

ORDER NO. 98-124-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. The Meadows Development Inc., (hereinafter, "The Meadows") is the development company of a site located at T16S, R1W, S8 & 9 in Jefferson County, Alabama. Rudy James is the manager and responsible party for the site.

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

executed mailed
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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 November 10, 1994, the Department issued authorization to The Meadows to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR 101185. The NPDES permit regulates The Meadows' discharges into an unnamed tributary to Dry Creek and imposes limitations and monitoring requirements.

5. Part II, B., 2., a., of NPDES General Permit No. ALG610000 requires the permittee to prepare and implement Best Management Practices ("BMP") which adequately controls, eliminates, or reduces pollutants in stormwater runoff.

6. On March 30, 1995, an inspection was conducted at The Meadows, and Department personnel determined that the builders were not using BMPs, and the developer's BMPs were not being maintained. It was observed that sediments were leaving the site. A Warning Letter was sent to the permittee, as a result of this inspection. On April 18, 1995, the permittee replied to the Warning Letter stating that corrections of the deficiencies were being made.

7. On May 9, 1995, an inspection was conducted at The Meadows, and it was again observed that the BMPs were not being maintained. The silt fences had been installed improperly, and sediments and construction trash were leaving the site in stormwater runoff. A Warning letter ("WL") was sent to the permittee on May 25, 1995. On June 5, 1995 the permittee replied in writing that the deficiencies were being corrected.

8. On June 27, 1996, an inspection was conducted at The Meadows (High Point), a new sector of the development. Sediment was observed to have been leaving the site and going into an unnamed tributary to Dry Creek, and silt fences were installed incorrectly or not maintained. On July 26, 1996, a Notice of Violation ("NOV") was sent to the permittee. The NOV requested a response from the permittee, as of the date of this Consent Order the Department has received no response.

9. A follow-up inspection was conducted on January 7, 1998. Department personnel determined that the silt fences were not being maintained, some builders were not using any BMPs, trash on-site was not being cleaned-up, and sediments were still entering into an unnamed tributary to Dry Creek. A second NOV was sent to the permittee requesting a response within three days of receipt of said NOV. The permittee replied and a meeting was arranged to attempt to facilitate compliance at the site.

10. The Meadows understands that this Consent Order addresses only those violations of the Department's Water Program covered in ADEM Admin. Code Div. 335-6 and identified in these FINDINGS. Potential violations of other regulatory programs administered by the Department are reserved from this Consent Order.

11. Although The Meadows does 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 and not to contest same. In view of the above and its desire to comply with the provisions of the Act, The Meadows also agrees to the terms of this Consent Order.

12. 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, The Meadows shall pay to the Department Two Thousand Five Hundred Dollars (\$2,500) in full and final settlement for the past violations cited herein.

B. That the permittee shall submit within fourteen (14) days from the date of the execution of this Consent Order, a plan for the removal or stabilization of all sediments deposited off site. This plan must be designed by a credentialed, qualified professional licensed to practice in Alabama and shall ensure that there is no impairment of water quality of any waters of the State.

C. The permittee shall submit within fourteen (14) days from the date of execution of this Consent Order, 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 stormwater runoff from discharging into waters of the State. This plan, at a minimum, must meet the standards found in the EPA document entitled "Stormwater 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 the permittee so that it does accomplish the task. This plan shall be implemented within thirty (30) days from the date of execution of this Consent Order.

D. That the permittee 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 has been fully implemented.

E. That in addition to the fixed penalties assessed herein, The Meadows shall pay stipulated penalties to the Department as follows: for every week after the above-mentioned fourteen (14) day period that the permittee fails to submit a plan as aforementioned designed by a credentialed, qualified professional, the permittee shall pay Five Hundred (\$500.00) per week. The total stipulated penalty shall not exceed Ten Thousand Dollars (\$10,000.00). Total payment of said penalty shall be due seven (7) calendar days after the due date of the plan.

F. Nothing in the foregoing schedule shall relieve The Meadows 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 The Meadows of any liability for any violations occurring at the facility following issuance of this Consent Order, except that no further civil penalties for the violations identified in this Consent Order shall be assessed beyond those stipulated in paragraph E herein.

G. That all stipulated penalties identified herein are to be paid as identified in paragraph E herein. The Department is under no obligation to notify The Meadows of the existence of any violations which prompt stipulated penalties or to demand payment of same.

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. 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 The Meadows for the violations identified herein.

J. That The Meadows is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. That for purposes of this Consent Order only, The Meadows 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. The Meadows also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, The Meadows shall be limited to the defenses of Force Majeure.

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

M. 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 The Meadows 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 22nd day of September, 1998.

RUDY JAMES
THE MEADOWS DEVELOPMENT, INC.

By: Rudy James

DATE: Sept 16, 1998

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Marilyn Elliott
Director

DATE: Sept 22, 1998