

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

THE MITCHELL COMPANY, INC.)

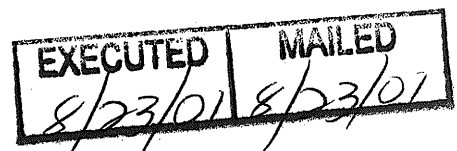
MOBILE COUNTY, ALABAMA)
NPDES PERMIT No. ALG 610000)
AUTHORIZATION ALR104870)

CONSENT ORDER NO. 01-202-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 through 22-22-14, 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 the Federal Water Pollution Control Act § 402, 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 Mitchell Company, Inc. (thereinafter the "Operator") is an Alabama corporation constructing a residential subdivision in Mobile, Alabama.



2. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-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 December 3, 1999, the Department issued to the Operator ALR104870 under NPDES Permit Number ALG610000 ("the Permit") subject to certain terms, conditions and limitations.

5. Pursuant to ADEM Admin. Code R. 335-6-10 and Part I, A, 3, a of NPDES General Permit #ALG610000, 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 are violations of the permit and may result in an enforcement action against the permittee.

6. On March 9, 2001, Department personnel inspected and collected samples at the above-referenced construction site. The inspection revealed that the Operator had failed to implement adequate Best Management Practices ("BMPs") and had violated water quality standards and the permit by discharging polluted runoff that caused instream turbidity to increase by 165 n.t.u. above background in an unnamed tributary of Milkhouse Creek, a water of the state. On March 12, 2001, Department personnel collected samples at the site, which indicated

the Operator had violated water quality standards and the permit by discharging polluted runoff that caused instream turbidity to increase by 213 n.t.u. above background in an unnamed tributary of Milkhouse Creek, a water of the state. On April 2, 2001, the Department sent a Notice of Violation ("NOV") to the Operator for failure to maintain Best Management Practices ("BMPs") and offsite sedimentation to an unnamed tributary of Milkhouse Creek.

a. On March 23, 2000, Department personnel inspected the above-referenced construction site. The inspection revealed that the Operator had failed to implement adequate Best Management Practices ("BMPs"). A Warning Letter was left on site for off-site sedimentation and failure to maintain BMPs. On April 21, 2000, the Department received a response from the Operator and Rester and Coleman Engineers, Inc. which addressed the maintenance of BMPs. The Department determined the response to be adequate.

b. On January 29, 2001, Department personnel inspected the above-referenced construction site. The inspection revealed that the Operator had failed to implement adequate BMPs. A Warning Letter was left onsite for failure to maintain BMPs. On February 9, 2001, the Department received a response from the Operator and Rester and Coleman Engineers, Inc. which addressed the maintenance of BMPs. The Department determined the response to be adequate.

c. On March 9, 2001, Department personnel inspected and collected samples at the above-referenced construction site. These samples indicated that the Operator had violated water quality due to increased turbidity 165 n.t.u. above background into an unnamed tributary of Milkhouse Creek, a water of the state. The inspection revealed that the Operator had failed to implement adequate BMPs. On March 12, 2001, the Department personnel collected samples at

the site which indicated the Operator had violated water quality due to increased turbidity 213 n.t.u. above background into an unnamed tributary of Milkhouse Creek, a water of the state.

7. The Operator neither admits nor denies violating the Permit in the foregoing manner or any other respect, but in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Operator has agreed to the terms of this Consent Order.

8. 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 Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18) and 22-22-9(I).

A. That, within thirty (30) days from the date this Order becomes final, the Operator will pay to the Department a civil penalty in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00).

B. That, within fourteen (14) days from the date this Order becomes final, the Operator will submit for the Department's review and comment an evaluation of sediments deposited in waters of the State and sediments deposited offsite that might erode and deposit in waters of the State and a plan for the stabilization or remediation of all sediments deposited in waters of the State or sediments deposited offsite that might erode and deposit in waters of the of the State. This plan must ensure that there are no impairments of State water quality standards in any water of State, both in the remedial process and by the final remedy. A credentialed, qualified professional licensed in the State of Alabama must prepare this evaluation and remediation plan.

C. That, within fourteen (14) days from the date this Order becomes final, the Operator will submit for the Department's review and comment a plan for implementing appropriate permanent structural or non-structural Best Management Practices adequate to prevent or minimize the discharge of sediment or other pollutants to waters of the State. This plan must meet the requirements of the United States Environmental Protection Agency's stormwater management for construction activity documents. This plan must be prepared and certified by a qualified credentialed professional licensed in the State of Alabama.

D. That, within thirty (30) days from the date the Department completes review and comment of the above plans, the Operator will submit to the Department certification that the plans referenced by Paragraphs B and C, above, are fully implemented. This certification must be prepared and executed by the qualified credentialed professional that prepared the plan(s).

E. That the Operator will comply with all terms, conditions and limitations of the Permit, including but not limited to all monitoring and reporting requirements and all best management practices requirements, until released from the Permit.

F. 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 that are cited in this Order.

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

H. For purposes of this Order only, the Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Operator also agrees that 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.

I. 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 Operator which would constitute possible violations not addressed in this Order, then such 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 Order if future Orders, litigation or other enforcement action address matters not raised in this Order.

J. By agreement of the parties, this 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.

THE MITCHELL COMPANY, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: W. Lee Walk
Sr. Vice Pres.

By: Manlynn Elliott

DATE: _____

DATE: 8/23/01