

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
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)

WEATHERLY PARTNERS, L.L.C.)
SHELBY COUNTY, ALABAMA)
ALR104766)
_____)

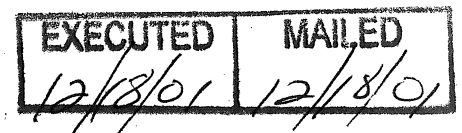
CONSENT ORDER NO. 02-039-CMNPS

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. Weatherly Partners, L.L.C. (hereinafter "Weatherly Partners") is the permittee and responsible party for the Weatherly Highlands development, site in Shelby County, Alabama. Robert Sinclair is the president of Weatherly Partners L.L.C., and is the responsible corporate officer for the Weatherly Highlands site located off County Road 11 in Shelby County, Alabama, at T20S, R2W, S31 & 32.

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 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 May 28, 1999, the Department issued authorization to Weatherly Partners to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR104766. The NPDES permit regulates Weatherly Partners' discharges into an unnamed tributary to Peavine Creek and imposes limitations and monitoring requirements.

5. Part II, B, 2, a, of NPDES General Permit No. ALG610000 requires Weatherly Partners to prepare and implement a comprehensive Best Management Practices, ("BMP"), plan to prevent/minimize the discharge of all sources of pollution (i.e. sediment, trash, garbage, debris, oil & grease, chemicals, materials, etc.) to State waters in storm water runoff. During inspections conducted by representatives of the Department at the site on April 10, 2000, April 11, 2000, June 2, 2000, April 2, 2001, and August 3, 2001, Weatherly Partners was observed to be in violation of Part II, B, 2, a, of NPDES General Permit No. ALG610000. Specifically, during the inspection it was observed that the BMPs in place were not adequate. The site's inadequate BMPs has resulted in increased erosion and offsite sedimentation. On April 14, 2000, and April 5, 2001, the Department issued warning letters ("WLs") to Weatherly Partners for the above-referenced violations. On June 30, 2000, and August 6, 2001 the Department issued Notices of Violations ("NOVs") to Weatherly Partners for the above-referenced violations at the site. Although written responses to the WLs and the NOVs were received by the Department, the violations were never properly abated.

6. Part II-C-1. of General Permit No. ALG61000, requires the permittee to promptly take all reasonable steps to mitigate and minimize or prevent any adverse impact on human health or the environment, including the responsible removal or remediation of sediment, debris, or other pollutants deposited in or allowed to enter any stream or storm water conveyance structure. As described herein, Weatherly Partners did not comply with Part II-C-1. of General Permit No. ALG61000. On April 14, 2000, and April 5, 2001, the Department issued warning letters ("WLs") to Weatherly Partners for the above-referenced violations. On June 30, 2000, and August 6, 2001, the Department issued Notices of Violations ("NOVs") to Weatherly Partners for the above-referenced violations at the site. Although written responses to the Wls and the NOVs were received by the Department, the violations were never properly abated.

7. Part II, E, 1., a. of General Permit No. ALG61000, states that it is the permittee's responsibility to comply with all conditions of the permit (ALG610000), and that any violations of the permit are a violation of the Alabama Water Pollution Control Act and the Federal Water Pollution Act. As described herein, Weatherly Partners did not comply with all conditions of NPDES General Permit No. ALG61000. . On April 14, 2000, and April 5, 2001, the Department issued warning letters ("WLs") to Weatherly Partners for the above-referenced violations. On June 30, 2000, and August 6, 2001, the Department issued Notices of Violations ("NOVs") to Weatherly Partners for the above-referenced violations at the site. Although written responses to the Wls and the NOVs were received by the Department, the violations were never properly abated.

8. Although Weatherly Partners may 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, not to contest same. In view of the above and its desire to comply with the provisions of the Act, Weatherly Partners also agrees to the terms of this Consent Order.

9. 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, Weatherly Partners shall pay to the Department a civil penalty of Ten Thousand Dollars (\$10,000.00) in full and final settlement for the past violations cited herein.

B. That, immediately upon the date of execution of this Consent Order, Weatherly Partners shall implement temporary BMP's adequate to prevent sediment in storm water from leaving the construction site. Said BMP's shall also be adequate for the control of other pollutants in storm water runoff discharging into waters of the State of Alabama. Further, these BMP's shall conform to the EPA document entitled *Storm Water Management for Construction Activities*.

C. That, immediately upon the date of execution of this Consent Order, and continuing thereafter, the permittee shall comply with all other terms, conditions, and limitations of the Permit.

D. That, Weatherly Partners shall submit within fourteen (14) days from the date of execution of this Consent Order the following:

1. A plan for implementing appropriate permanent structural and non-structural BMP's that are adequate to prevent or minimize to the extent possible sediments and other pollutants in the storm water runoff from discharging into waters of the State. This plan, at a minimum, must meet the standards found in the EPA document entitled *Storm Water 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 Weatherly Partners so that it does accomplish the tasks. Additionally, the Department may, in its sole discretion, unilaterally modify the plan to the extent necessary to accomplish those tasks. This plan shall be implemented within thirty (30) days from the date of execution of this Consent Order.

E. That Weatherly Partners 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 and is effective in controlling, minimizing or reducing sediments from entering storm water runoff from the Weatherly Highlands site.

F. That Weatherly Partners shall submit within fourteen (14) days from the date of 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.

G. That Weatherly Partners shall conduct the monthly inspections required by Part I,B, of NPDES General Permit ALG610000. These inspections shall be conducted by a qualified, credentialed professional. Further, the inspection results shall be provided to the Department in inspection reports which shall be certified by the qualified, credentialed professional for accuracy and shall be submitted to the Department by the 28th of the month following said inspection. The Department may release Weatherly Partners from the requirements of this paragraph, upon written request from Weatherly Partners following a demonstration of compliance with all paragraphs of this Consent Order and all requirements under General Permit No. ALG610000 for twelve (12) consecutive months. Said demonstration shall include copies of all data or other reports necessary to establish compliance for the twelve (12) month time period. Said release from this paragraph, if granted, shall not relieve Weatherly Partners from any inspection or any other requirement under this Consent Order

or General Permit No. ALG610000.

H. That nothing in the foregoing schedule shall relieve Weatherly Partners the obligation to comply with the provisions of its permits or the Act and the regulations. Nothing in this Consent Order shall operate to relieve Weatherly Partners of any liability for any violations occurring at the facility following issuance of this Consent Order.

I. 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.

J. 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. However, the issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against Weatherly Partners for the violations identified herein.

K. That Weatherly Partners is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. That for purposes of this Consent Order only, Weatherly Partners 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. Weatherly Partners also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, Weatherly Partners shall be limited to the defenses of compliance with this Consent Order, physical impossibility, and Force Majeure.

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

N. That 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 Weatherly Partners 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 19th day of September, 2001.

WEATHERLY PARTNERS

By: Patrick I. Hunter

DATE: 12/14/01

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: John A. Packer
Director

DATE: 12/18/01