

LANCE R. LeFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

October 24, 2014

CERTIFIED MAIL

DONNIE GILBERT
LEGENDARY COMMUNITIES ALABAMA
P.O. BOX 220
DOUGLASVILLE, GA 30133

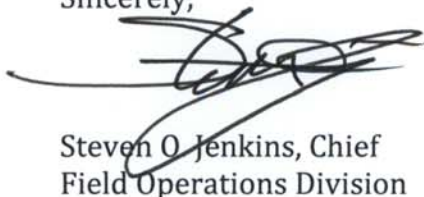
RE: CONSENT ORDER 15-008-CLD
Riverside Estates
T16N, R30E, S33, off of Hwy 165 in Fort Mitchell, AL
NPDES ALR10A595
Russell County (113)

Dear Mr. Gilbert:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Ryan Cooper, Office of Field Services**, by email at rcooper@adem.state.al.us or by phone at (334) 274-4205.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/rdc File:ECO/43377

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)	
)	
)	
LEGENDARY COMMUNITIES ALABAMA)	CONSENT ORDER 15-008-CLD
RIVERSIDE ESTATES)	
FORT MITCHELL, RUSSELL COUNTY, ALABAMA)	
NPDES ALR10A595)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Legendary Communities Alabama (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (2006).

STIPULATIONS

1. The Operator is a Georgia limited liability company constructing a residential subdivision at Riverside Estates (hereinafter "Facility") located in T16N, R30E, S33, off of Highway 165 in Fort Mitchell, Russell County, Alabama.

2. The following references and acronyms are used in this Consent 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
GP	ADEM NPDES General Permit ALR100000
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

3. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to a UT to Uchee Creek, a water of the State.

4. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

5. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 (2006). In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

6. ADEM Admin. Code r. 335-6-12-.21(1) provides that commencement and/or continuation of NPDES construction activity is prohibited unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements of ADEM Admin. Code chap. 335-6-12 and applicable requirements of ADEM Admin. Code div. 335-6. The CBMPP and any BMPs shall meet or exceed the technical standards of ADEM Admin. Code chap. 335-6-12, and 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").

7. ADEM Admin. Code r. 335-6-12-.06(3) requires the operator, upon the reduction in effectiveness, loss, or failure of a treatment facility or BMP, to control/suspend/cease construction until the BMP/control is restored. ADEM Admin. Code r. 335-6-12-.35(11)(a) requires the operator to take all reasonable steps, including cessation of construction, building, production, or other activities, to prevent/minimize any violation or to prevent/minimize any adverse impact of any violation of ADEM Admin. Code chap. 335-6-12. ADEM Admin. Code r. 335-6-12-.35(11)(b) requires the operator, upon the loss or failure of any treatment facility or BMP, to cease, suspend, reduce, or otherwise control construction or other activities as necessary until treatment is restored or effective BMPs have been repaired or installed.

8. ADEM Admin. Code r. 335-6-12-.21(5) requires the operator to ensure that effective BMPs are implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes.

9. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10), operators are required to promptly take all reasonable steps to determine the nature and impact of non-complying discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

10. Pursuant to ADEM Admin. Code rs. 335-6-6-.03 and 335-6-6-.23(15), the Operator is required to submit to the Department an NOI and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

11. During an inspection of the Facility on October 30, 2012, the Department documented that the Operator had not applied for and obtained NPDES coverage prior to commencing regulated disturbance activities, in violation of ADEM Admin. Code rs. 335-6-6-.03 and 335-6-6-.23(15).

12. During an inspection of the Facility on October 30, 2012, the Department documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code rs. 335-6-12-.21(1), 335-6-12-.06(3), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b).

13. On November 9, 2012, a NOV was sent to the Operator by the Department as a result of the October 30, 2012, inspection. The NOV notified the Operator of deficiencies documented at the Facility and requested the Operator to submit to the Department within ten days of receipt of the NOV, a complete and correct NOI. The NOV also requested the Operator to submit to the Department within ten days of receipt of the NOV, certification by a QCP that all deficiencies at the Facility had been corrected.

14. The Department granted an extension of the compliance deadline contained in the November 9, 2012, NOV until February 8, 2013, to provide additional time for the Operator to correct all deficiencies.

15. On February 10, 2013, the Operator submitted a response to the NOV. The response included a certification by a QCP that the Operator had repaired and/or properly implemented BMPs throughout the facility in accordance with the Alabama Handbook.

16. On February 13, 2013, the Operator submitted to the Department a NOI requesting NPDES permit coverage under the GP for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted authorization ALR10A595 to the Operator on February 22, 2013. The GP will expire on March 31, 2016.

17. Pursuant to Part III. A. of the GP, the Operator 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 and the site-specific CBMPP prepared in accordance with Part III. D. of the GP.

18. Pursuant to Part III. D. of the GP, construction activity may not commence until a CBMPP has been prepared in a format acceptable to the Department and certified by a QCP as adequate to meet the requirements of the GP. The Operator shall properly implement and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.

19. During an inspection of the Facility on February 6, 2014, the Department documented that, although NPDES construction activity had commenced, the Operator had not properly implemented and maintained effective BMPs in violation of Part III. A. and D. of the GP.

20. Pursuant to Part III. C. of the GP, the Operator must design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.

21. During the February 6, 2014, inspection, the Department observed improper implementation and/or maintenance of pollution prevention measures to minimize the discharge of pollutants from construction wastes in violation of Part III. C. of the GP.

22. Pursuant to Part III. H. 3. of the GP, the Operator shall promptly take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.

23. During the February 6, 2014, inspection, accumulations of sediment resulting from discharges at the Facility were observed offsite and in a UT to Uchee Creek, a water of the State, in violation of Part III. H. 3. of the GP.

24. On February 21, 2014, a NOV was sent to the Operator by the Department as a result of the February 6, 2014, inspection. The NOV notified the Operator of deficiencies documented at the Facility and requested the Operator to submit to the Department within then days of receipt of the NOV, a written report, prepared and certified by a QCP, describing the steps taken to correct the noted violations, a BMP site

assessment report, a detailed plan for the remediation and/or removal of sediment deposited offsite, copies of all NPDES construction site inspection reports from the previous 180 days, and a complete and correct NOI.

25. On March 10, 2014, the Operator submitted a response to the NOV. The response included a certification by a QCP that the Operator had repaired and/or properly implemented BMPs throughout the facility in accordance with the Alabama Handbook. The response also included a written report, prepared and certified by a QCP, describing the steps taken to correct the noted violations including sediment removal/remediation, a BMP site assessment report, copies of all NPDES construction site inspection reports from the previous 180 days, and a copy of the pending modified NOI.

26. On April 15, 2014, the Operator submitted additional information with photographs indicating that sediment removal/remediation has occurred at the facility.

27. The Operator neither admits nor denies the Department's allegations. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)(c)(2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, 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 violations 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 seriousness of the violations, their effects, if any on impaired waters, and any available evidence of harm to the environment or threat to the public, the Department determined the base penalty to be \$13,000.

B. THE STANDARD OF CARE: In considering this factor, the Department noted that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements. However, the Department believes the base penalty is sufficient to address this factor.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator has delayed certain costs associated with obtaining/maintaining a valid NPDES permit. The Operator has delayed certain costs associated with implementing and maintaining effective BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional \$900.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: After receiving the Department's February 21, 2014, NOV, the Operator contends that it undertook diligent efforts to effectively address the noted violations and to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has documented previous violations by the Operator resulting in significant formal enforcement action(s).

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.

H. It should be noted that this Consent Order 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.

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)(2006 Rplc. Vol.), 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 agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$3,000 in settlement of the violations alleged herein within forty-five days from issuance of this Consent Order. Failure to pay the civil penalty within forty-five days from issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Operator agrees 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

C. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES permit limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator, except as may be provided otherwise by an ADEM-accepted compliance schedule contained in this Consent Order or any other Order executed or issued by the Department.

D. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable noncompliant and/or unpermitted discharges of pollutants to waters of the State.

E. The Operator agrees, unless relieved of this requirement in writing by the Department, that:

1. All inspections/evaluations shall be performed by a QCP;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of a QCP and shall be certified by a QCP;
3. All applications, plans, and information shall be certified by a QCP;
4. All submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a QCP; and
5. All applications, plans, reports, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or

her QCP designation, how the inspection/work was conducted, and the results of the inspection/work.

F. The Operator agrees to submit any application, plan, information, report, or other submittal required by this Consent Order to:

Office of Field Services
Field Operations Division
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

G. The Operator agrees, within five days of the receipt of any written comments from the Department, to modify in writing any application, plan, information, report, or other submittal, and submit additional written information/clarification to the Department to address any comments made by the Department.

H. The Operator agrees, within five days after the effective date of this Consent Order, to have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

I. The Operator agrees, within twenty days after the effective date of this Consent Order, to fully implement and maintain effective BMPs, implement all plans required by this Consent Order, and correct all deficiencies at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation. The BMPs shall meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and the GP.

J. The Operator agrees, within twenty-five days after the effective date of this Consent Order, to submit to the Department a certification with photo-documentation that effective BMPs have been implemented, all deficiencies have been corrected, and full compliance with the requirements of the GP has been achieved at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation.

K. The Department and the Operator (hereinafter "Parties") agree 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.

L. The Parties agree 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.

M. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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. 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.

O. The Parties agree 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.

P. The Parties agree 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.

Q. The Parties agree that this Consent Order does not preclude, negate, or otherwise affect the Operator's obligation or liability to comply with any Federal, State or local laws, regulations, or permit requirements.

R. The Parties agree 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.

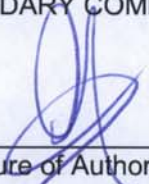
S. The Parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

T. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

U. The Parties agree 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.

LEGENDARY COMMUNITIES ALABAMA



(Signature of Authorized Representative)

Donnie Gilbert

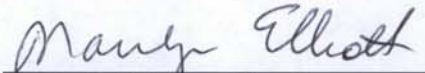
(Print Name of Authorized Representative)

Sec

Title

Date Signed: 8-29-14

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Lance R. LeFleur, Director

Date Signed: 10/24/2014

ATTACHMENT 1 - PENALTY SYNOPSIS

Legendary Communities Alabama, LLC Fort Mitchell, Russell County NPDES ALR10A595

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	\$5,000		
Effective Best Management Practices (BMPs) not implemented and/or maintained	1	\$3,000		
Discharge/accumulation of sediment offsite	1	\$5,000		
Totals:	3	\$13,000		
Economic Benefit*:				\$900
Sub-Total:				\$13,900
Mitigating Factors*:				
Ability to Pay*:				
Other Factors*:				- \$10,900
Amount of Initial Penalty:				\$13,900
Total Adjustments:				- \$10,900
Final Penalty:				\$3,000

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