

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

JOHN PLOTT CONSTRUCTION, INC.
2804 RICE MINE ROAD
TUSCALOOSA, AL 35402
ALR102761

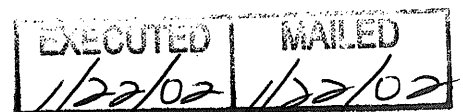
CONSENT ORDER NO. 02-061-CMNPS

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. John Plott Construction, Inc. ("John Plott Construction" or "Permittee") is the permittee and responsible party for the Interstate Properties site in Tuscaloosa County, Alabama. Mr. John Plott is the president of John Plott Construction, Inc. The Interstate Properties site is located at T21S, R9W, S35 in Tuscaloosa, Alabama.

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 July 15, 1997, the Department issued authorization to John Plott Construction to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number to discharge pollutants under the provisions of ALG610000 is ALR102761. The NPDES permit regulates John Plott Construction's discharges into unnamed tributary of Cottondale Creek and imposes limitations and monitoring requirements.

5. ADEM Admin. Code R. 335-6-10-.04(3), Antidegradation Policy, states that "...nonpoint source discharges shall use best management practices adequate to protect water quality consistent with the Department's nonpoint source control Program."; and

Parts II, B, 2 (a) & (b) of NPDES Permit ALG610000 require the permittee to prepare and implement a Best Management Practices (BMP) plan in accordance with good engineering practices as provided in: *The Storm Water Management For Construction Activities-Developing Pollution Prevention Plans and Best Management Practices*, which adequately controls, eliminates, or reduces pollutants in storm water runoff.

Inspections were performed at the site on November 30th, 1999, August 31st, 2000, and July 2nd, 2001, which established that the site due to a failure to implement and maintain adequate BMPs was in violation of ADEM Admin. Code R. 335-6-10-.04(3), and Parts II, B, 2 (a) & (b) of NPDES Permit ALG610000.

6. Part II,C,1., of NPDES General Permit No. ALG610000 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.

Inspections were performed at the site on November 30th, 1999, August 31st, 2000, and July 2nd, 2001. During the inspections the following violation was consistently noted: appropriate, effective Best Management Practices (BMPs) for the control of pollutants in stormwater run-off had not been properly implemented and maintained resulting in the potential for uncontrolled discharges of sediment and other pollutants to an unnamed tributary of Cottdale Creek, a water of the State of Alabama, in violation of Part II,C,1., of NPDES General Permit No. ALG610000.

7. Part II, E, 1., a. of General Permit No. ALG610000, states that it is the Permittee's responsibility to comply with all conditions of the permit (ALG610000) and that any violations of the permit is a violation of the Alabama Water Pollution Control Act. During the above-cited inspections it was observed that the Permittee failed to meet its responsibility of complying with all conditions of the permit, in violation of, Part II, E, 1., a. of General Permit No. ALG610000.

8. Although John Plott Construction, Inc. 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, John Plott Construction, 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 Consent 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, John Plott Construction shall pay to the Department a civil penalty of Five Thousand Dollars (\$5,000.00) in full and final settlement for the past violations cited herein.

B. That immediately upon execution of this Consent Order, John Plott Construction 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 execution of this Consent Order, and continuing thereafter, the Permittee shall comply with all other terms, conditions, and limitations of the Permit.

D. That John Plott Construction shall submit within fourteen (14) days from the date of execution of this Consent Order the following:

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 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 John Plott Construction 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 fourteen (14) days from the date of execution of this Consent Order.

E. That John Plott Construction shall submit to the Department within sixty (60) 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 Interstate Properties site.

F. That John Plott Construction 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 John Plott Construction from the requirements of this paragraph, upon written request from John Plott Construction 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 John Plott Construction from any inspection or any other requirement under this Consent Order or General Permit No. ALG610000.

G. That nothing in the foregoing schedule shall relieve John Plott Construction 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 John Plott Construction of any liability for any violations occurring at the facility following issuance of this

Consent Order.

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. 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 John Plott Construction for the violations identified herein.

J. That John Plott Construction 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, John Plott Construction 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. John Plott Construction also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, John Plott Construction 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 John Plott Construction 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 John Plott Construction shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

M. 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 John Plott Construction 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 January, 2002.

JOHN PLOTT CONSTRUCTION, INC.

By: _____

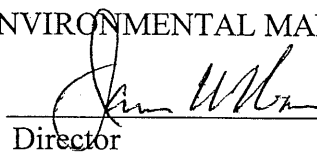


DATE: _____

1-2-02

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: _____


Director

DATE: _____

22 JAN 2002