

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

SHELBY DEVELOPMENT COMPANY, INC.)
TRICE ADDITION TO INNSBROOKE)
AL HWY 75 T15S R1W S29)
JEFFERSON COUNTY, ALABAMA)
NPDES ALHA03225)
_____)

ADMINISTRATIVE
ORDER 04-107-MNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (1975), as amended, and the Alabama Water Pollution Control Act (AWPCA), Ala. Code §§ 22-22-1 through 22-22-14 (1975), as amended, the ADEM Administrative Code of Regulations (ADEM Admin. Code R.) promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (NPDES) administered by the Alabama Department of Environmental Management ("Department" or "ADEM") and approved by the Administrator of the U.S. Environmental Protection Agency ("EPA") pursuant to the Federal Water Pollution Control Act (FWPCA) §402, 33 U.S.C. § 1342, as amended, the Department makes the following FINDINGS:

1. Shelby Development Company, Inc., an Alabama corporation, and Sheryl Berzette (separately and collectively hereinafter the "Operator") are developing Trice Addition to Innsbrooke (hereinafter the "Facility"), a residential subdivision on Alabama Highway 75 in Township 15 South, Range 1 West, Section 29, located in Jefferson County, Alabama. Sheryl Berzette is a member of Shelby Development Company, Inc. and is responsible for the

corporation and the Facility. Sheryl Berzette is also responsible for the Facility in her individual capacity. If the Operator's site preparation and construction activities are not properly managed, sediment and other pollutants in untreated stormwater runoff can be discharged into Innsbrooke Lake and Dry Creek, waters of the State of Alabama, both classified for Fish and Wildlife.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code § 22-22A-1 through 22-22A-16 (1975), as amended.

3. Pursuant to Ala. Code § 22-22A-4(n) (1975), as amended, the Department is the State agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the FWPCA. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. On November 19, 1999, the Department issued Authorization ALR104839 to the Operator under NPDES general permit ALG610000. Part II, B., 2., a., of ALG610000 required the Operator to implement effective Best Management Practices (BMPs) to prevent/minimize to the maximum extent practicable the discharge of all sources of pollution (i.e. sediment, trash, garbage, debris, oil & grease, chemicals, materials, etc.) in stormwater runoff to waters of the State. Part I, B., C., & D. of the general permit required the Operator to maintain records of comprehensive monthly site inspections, and to provide the records to the Department upon request. Part II, C., 1. of the general permit required the Operator to mitigate environmental impacts resulting from noncompliance with any requirements of the general permit, including removal of sediment deposited off-site. Authorization ALR104839 expired on February 28, 2003.

5. ADEM Consent Order 02-195-CMNPS was issued to the Operator by the Department on June 20, 2002, for failure to fully implement and adequately maintain effective

BMPs and for failure to prevent/minimize to the maximum extent practicable the discharge of sediment to off-site areas and waters of the State. ADEM Consent Order 02-195-CMNPS required the implementation of effective BMPs, the removal/remediation of sediment deposited off-site, and the submittal of certification by a Department recognized Qualified Credentialed Professional (QCP) that effective BMPs had been implemented.

6. Inspections conducted by the Department on July 12, 2002, August 13, 2002, September 11, 2002, September 23, 2002, November 26, 2002, and February 19, 2003, revealed that the Facility had insufficient and/or improperly maintained BMPs. The inspections also found accumulations of sediment from the Facility in off-site drainages and in waters of the State. In addition, required QCP certifications had not been submitted to the Department as required by Consent Order 02-195-CMNPS. Warning Letters were issued by the Department on July 22, 2002, September 26, 2002, and January 2, 2003, notifying the Operator of the deficient BMPs and the failure to submit the required QCP certifications. The letters also notified the Operator to submit schedules of compliance and records of monthly site inspections. As of August 2, 2004, information requested by the Warning Letters had not been received by the Department.

7. ADEM Admin. Code R. 335-6-12-.11(1) requires that, after March 1, 2003, continued operation of NPDES construction sites where an operator/owner has not submitted a complete and correct Notice of Registration (NOR), is prohibited. Inspections conducted by the Department on August 8, 2003, and August 11, 2003, revealed that construction activities at the Facility were ongoing and the Operator had not submitted an NOR. A Warning Letter requiring submittal of an NOR was issued to the Operator on August 11, 2003. A complete and correct

NOR was submitted to the Department on September 2, 2003. The Operator was issued registration ALHA03225 on September 2, 2003.

8. ADEM Admin. Code R. 335-6-12-.05(2) requires an operator to maintain adequate records to document compliance and fully implement and regularly maintain effective BMPs to the maximum extent practicable in accordance with the Operator's Construction Best Management Practices Plan (CBMPP).

9. Inspections conducted by the Department on August 8, 2003, August 11, 2003, November 18, 2003, February 3, 2004, February 18, 2004, April 22, 2004, and June 14, 2004, revealed that the Operator had not properly implemented and maintained effective BMPs. Warning Letters were issued by the Department on August 11, 2003, November 20, 2003, February 4, 2004, and April 22, 2004, notifying the Operator of the deficient BMPs, and the need to submit an updated CBMPP and a detailed BMP implementation schedule, certified by a QCP. As of August 2, 2004, information requested by the Warning Letters had not been received by the Department.

10. ADEM Admin. Code R. 335-6-12-.35(10)(a) requires the Operator to remove to the maximum extent practical, sediment and other pollutants deposited off-site, in any stormwater conveyance structure, or in waters of the State.

11. Inspections conducted by the Department on August 8, 2003, August 11, 2003, November 18, 2003, February 3, 2004, February 18, 2004, April 22, 2004, and June 14, 2004 found that the Operator had failed to adequately remove sediment from the Facility deposited off-site and in waters of the State. Department inspections identified accumulations of sediment from the Facility deposited in an off-site area behind several homes on Lakes Edge Lane, in a drainage course and storm sewer adjacent to Ashberry Drive, in a drainage course adjacent to

Innsbrooke Parkway, in drainage courses and storm sewers leading to Innsbrooke Lake, in Dry Creek upstream of Innsbrooke Lake, and in Innsbrooke Lake. Warning Letters were issued by the Department on August 11, 2003, November 20, 2003, February 4, 2004, and April 22, 2004, notifying the Operator of the off-site sedimentation, and the need to submit plans for removal or stabilization of sediment deposited off-site and in waters of the State. As of August 2, 2004, information requested by the Warning Letters has not been received by the Department.

12. ADEM Admin. Code R. 335-6-12-.21(2)(b)14. requires the Operator to design and implement energy dissipation or flow velocity dissipation structures at any discharge locations and in any outfall channels to provide a stabilized, non-erosive flow velocity from the structures and prevent scouring of onsite and off-site areas during and after construction.

13. Inspections conducted by the Department on August 11, 2003, February 3, 2004, February 18, 2004, April 22, 2004, found excessive scouring and gully erosion on off-site slopes below the discharge outlets and below the western slopes of the Facility. Warning Letters were issued by the Department on August 11, 2003, November 20, 2003, February 4, 2004, and April 22, 2004, notifying the Operator of the off-site erosion and the need to implement corrective action. Information requested by the Warning Letters was not received by the Department until April 30, 2004.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (1975), as amended, it is hereby Ordered:

A. That, immediately upon receipt of notice of this Order, all construction and associated activities on any individual home lots and common areas located west of Brook Crest

Way (to include lots numbered consecutively from #203 to #216) shall cease at the Facility other than the installation, upgrade, repair, and modification of effective BMPs. All construction and associated activities on any individual home lots and common areas located west of Brook Crest Way (to include lots numbered consecutively from #203 to #216) is prohibited until such time that a Professional Engineer (PE) licensed to practice in the State of Alabama submits a certification to the Department that all deficiencies have been corrected and that full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12 has been achieved at the Facility, including affected off-site areas and waters of the State.

B. That, the Operator shall, immediately upon the receipt of notice of this Order and continuing thereafter, ensure immediate and future compliance with the AWPCA, ADEM regulations, and all NPDES registration limitations, terms, and conditions for all sites/facilities owned, operated, or controlled by the Operator, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Order.

C. That, within seven (7) days after receipt of notice of this Order, the Operator shall have a comprehensive inspection of the Facility, including, but not limited to, all slopes and structural BMPs and its receiving waters performed by a PE.

D. That, within twenty-one (21) days after receipt of notice of this Order, the Operator shall submit to the Department a CBMPP prepared by a PE, detailing effective BMPs to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater from leaving the Facility and to ensure full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12. Within seven (7) days of receipt of any written comments from the Department, the Operator shall modify the plan consistent with any comments made by the Department in writing.

E. That, within twenty-one (21) days after receipt of notice of this Order, the Operator shall submit a detailed plan prepared by a PE for the remediation and/or removal of sediment and other pollutants deposited: behind several homes on Lakes Edge Lane; in the drainage course and storm sewer adjacent to Ashberry Drive; in the drainage course adjacent to Innsbrooke Parkway; in the drainage courses and storm sewers leading to Innsbrooke Lake; in Dry Creek upstream of Innsbrooke Lake; in Innsbrooke Lake, and any other offsite areas and State waters. Within seven (7) days of receipt of any written comments from the Department, the Operator shall modify the plan consistent with any comments made by the Department in writing.

F. That, within twenty-one (21) days after receipt of notice of this Order, the Operator shall submit a proposed compliance schedule prepared by a PE and signed by the Operator to implement the plans required in paragraphs D and E, correct all site deficiencies, and ensure full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12 no later than (45) days after receipt of notice of this Order.

G. That, within sixty (60) days after receipt of notice of this Order, the Operator shall submit a certification by a PE that all deficiencies have been corrected and that full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12 has been achieved at the Facility including affected off-site areas and waters of the State.

H. That, within thirty (30) days after receipt of notice of this Order, the Operator shall prepare and submit for the Department's review a written report detailing the results of comprehensive evaluations by a PE of all other ADEM NPDES regulated facilities/sites owned, operated, controlled, registered, permitted or required to be registered/permitted by the Operator, and their receiving waters. This report must indicate who conducted the evaluations, his or her

PE designation, how the evaluations were conducted, and shall contain the results of the evaluations and a plan, including compliance schedule, for correction of any deficiencies.

Within seven (7) days of receipt of any written comments from the Department, the Operator shall modify the plan consistent with any comments made by the Department in writing.

I. That, not later than forty-five (45) days after receipt of notice of this Order the Operator shall correct any deficiencies noted in the comprehensive evaluations at these other sites, including submission of NPDES registration for sites requiring NPDES permit coverage.

J. That, not later than sixty (60) days after receipt of notice of this Order the Operator shall submit certification by a PE that all deficiencies have been corrected, the tasks required in paragraphs H and I have been accomplished, and that full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12 has been achieved at the other sites.

K. Nothing in this Order shall operate to relieve the Operator of any liability for any violations occurring at the facility following issuance of this Order, or for any violations emerging from additional facts and circumstances discovered in the future concerning the facility which would constitute possible violations not addressed in this Order.

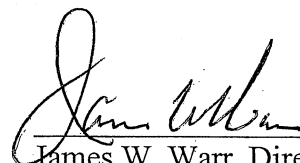
L. That, the failure to comply with the provisions of this Order shall constitute cause for the commencement of legal action by the Department against the Operator for the recovery of civil penalties, criminal fines, or other appropriate sanctions or relief.

M. That, in any action brought by the Department to compel compliance with the terms of this Order, the Operator shall be limited to the defenses of *Force Majeure*, compliance with this Order, 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 its 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 be beyond the reasonable control of the Operator and which delays or prevents performances by a date required by the Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain coverage under 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 (10) days prior to the required 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 specific circumstances.

N. That, the issuance of this Order does not preclude the Department from seeking civil penalties, criminal fines, or other appropriate sanctions or relief against the Operator for the violations cited herein.

ORDERED and ISSUED this **27TH** day of September, 2004.



James W. Warr, Director
Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served Administrative Order No. 04-107-MNPS upon Shelby Development Company, Inc. and Ms. Sheryl Berzette by sending the same in the below stated manner:


CERTIFIED MAIL (NO. 7002 2030 0000 9488 8807)

Shelby Development Company, Inc.
C/o Ms. Sheryl Berzette
P.O. Box 1494
Pelham, AL 35124

FEDERAL EXPRESS (8432 4238 5368)

Ms. Sheryl Berzette
5127 Lakecrest Circle
Birmingham, AL 35226

DONE this 27th day of September, 2004.


Rebecca E. Patty