

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
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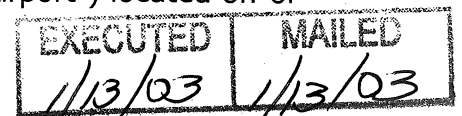
CONSOLIDATED FENCE COMPANY LLC)
TROY AIRPORT CONSTRUCTION)
T 10N, R 20E SECTION(S) 1,2,11, & 12)
TROY, PIKE COUNTY, ALABAMA)
UNPERMITTED SITE)
_____)

CONSENT ORDER NO. 03-054-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, and the Alabama Water Pollution Control Act, (hereinafter "AWPCA") Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") 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. Consolidated Fence Company, LLC., (hereinafter "Operator"), operates a construction site for airport improvements (hereinafter "Troy Airport") located off of



County Road 52 in The City of Troy, Pike County, Alabama (Township 10 North, Range 20 East, Sections 1, 2, 11, and 12).

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

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, 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 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. Federal Regulations (40CFR 122) regarding discharges of stormwater require an operator/operator to apply for and obtain NPDES permit coverage prior to conducting any construction or land disturbance that exceeds five acres, or is part of a common plan for development or sale which might eventually exceed five acres, and prior to discharging pollutants to waters of the State of Alabama.

5. Section 22-22-9(i)(3), Code of Alabama (1975), requires every person, prior to discharging any new or increased pollutants into any waters of the state, to apply in writing for permit coverage and must obtain such permit coverage before discharging such pollutants. ADEM Admin. Code R. 335-6-6-.03, states that no person shall discharge pollutants into waters of the State without first having obtained a valid NPDES permit or coverage under a valid NPDES general permit.

6. As of January 22, 2002, the Operator did not file a Notice of Intent (NOI) with the Department, requesting permit coverage under general permit ALG610000 because all work had been completed.

7. At the time of the January 22, 2002 inspection, Troy Airport had ongoing discharges of pollutants in stormwater runoff from construction activity, approximately 5 acres in size, to an unnamed tributary to Lake Haven and unnamed tributaries of the Conecuh River, all waters of the State. It was noted that effective Best Management Practices (BMPs) had not been implemented for the site.

8. The Operator neither agrees nor disagrees with the Findings presented in this Consent Order, and, in an effort to cooperate with the Department and to comply with the provisions of the AWPCA, the Operator has consented to the terms of the Consent Order.

9. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited 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 on 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), as amended, and with the consent of The Operator, it is hereby ORDERED:

A. That, not later than thirty (30) days after the effective date of this Consent Order, the Operator shall pay to the Department a civil penalty in the amount of Two-Thousand Dollars (\$2,000.00) for the violations cited herein. In determining the

amount of the penalty amount set forth herein, the Department considered the statutorily prescribed factors set forth at Code of Alabama (1975), § 22-22A-5(18)(c).

B. That all penalties due pursuant to this 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. That immediately upon the effective date of this Consent Order, the Operator shall fully implement and regularly maintain temporary BMPs to prevent/minimize pollutants (sediment) in stormwater from leaving the construction site.

D. That the Operator shall immediately, upon the date of execution of this Consent Order and continuing thereafter shall insure immediate and future compliance with the AWPCA, ADEM rules, including the requirement to obtain NPDES permit coverage prior to commencing regulated activities, and all NPDES permit limitations, terms, and conditions for all sites/facilities, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Order.

E. That not later than fifteen (15) days after the effective date of this Consent Order a Professional Engineer (PE) registered in the State of Alabama or a Department recognized Qualified Credentialed Professional (QCP) shall certify that all construction disturbance has been accomplished, and the site is reclaimed.

F. 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.

G. 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.

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

I. That, 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 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. 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 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 (10) 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 specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

J. 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 shall 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.

K. That, by agreement of the parties, 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.

Executed in duplicate with each part being an original.

CONSOLIDATED FENCE COMPANY LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Henry A. Wise III
(Name of Authorized Representative)

James W. Warr
James W. Warr
Director

President
Title

Date Signed: Jan 1st 03

Date Signed: 13 Jan 2003