

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

NORTH CREEK PROPERTIES, LLC
BENTLY PROPERTY
NORTHPORT, ALABAMA
ALR103721

CONSENT ORDER NO. 99-084-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. North Creek Properties, LLC ("Permittee") is the company developing the Bently Property site for construction of a commercial or industrial site in Tuscaloosa County, Alabama. Bill Barnes is an owner of North Creek Properties, LLC and the responsible party for the Bently Property site. The Bently Property Site is located at T20S, R10W, S28, 32, and 33.

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.

executed mailed
4/21/99 4/21/99

3. On July 15, 1997, the Department issued authorization to North Creek Properties, LLC to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR 103721. The NPDES permit regulates North Creek Properties, LLC's discharges into an unnamed tributary of Mill Creek and imposes limitations and monitoring requirements.

4. Part II, B., 2., a., of NPDES General Permit No. ALG610000 requires the Permittee to prepare and implement Best Management Practices ("BMP's") which adequately controls, eliminates, or reduces pollutants in stormwater runoff.

5. Part II, C., 1., states, "the permittee shall promptly take all reasonable steps to mitigate and minimize or prevent any adverse impact on human health or the environment resulting from noncompliance with any limitations of this permit, including such accelerated or additional monitoring of the discharge and/or receiving waterbody as necessary to determine the nature and the impact of the noncomplying discharge."

6. Part II, E., 1., a., states that it is the permittee's responsibility to comply with all conditions of the permit (ALG610000), and that any violation of the permit is a violation of the Alabama Water Pollution Control Act and the Federal Water Pollution Act.

7. On August 28, 1998, an inspection was conducted at the Bently Property site, and Department personnel determined that BMP's were not being maintained and that sediments were leaving the site. A Notice of Violation (NOV) was issued to the Permittee on October 15, 1998. This NOV required the Permittee to contact the Department within fourteen (14) days of receipt of the notice to set up a meeting to discuss settlement of the matter. During this inspection the following violations of the ADEM Administration Code were observed: silt fences and hay bales had not been properly installed or maintained, and large erosion gullies were present; banks of on-site streams had been cleared down to the water, and the slopes had not been stabilized; sediments were present within

the ditches and streams on-site, as well as within the streams off-site; large piles of sediment, which had been removed from the streambed, had been placed directly adjacent to the stream banks with no measures taken to keep the sediments from being washed back into the stream; and off-site sediment was evident.

8. On November 6, 1998, a meeting was conducted at the ADEM-Birmingham Field Office to discuss the above violations.

9. North Creek Properties, LLC understands that this Consent Order addresses only those violations of the Department's Water Program covered in ADEM Admin. Code Div. 335-6 and identified in these FINDINGS. Potential violations of other regulatory programs administered by the Department are reserved from this Consent Order.

10. Although North Creek Properties, LLC does 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, with no admission of liability. In view of the above and its desire to comply with the provisions of the Act, North Creek Properties, LLC also agrees to the terms of this Consent Order.

11. 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, North Creek Properties, LLC shall pay to the Department One Thousand Five Hundred Dollars (\$1,500.00) in full and final settlement for the past violations cited herein.

B. That immediately upon the date of execution of this Consent Order, North Creek Properties, LLC shall implement temporary BMP's adequate to prevent sediment in stormwater from leaving the construction site. Said BMP's shall also be adequate for the control of other pollutants in stormwater 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 North Creek Properties, LLC shall submit within ten (10) days of execution of this Consent Order, a plan to the Department for implementing appropriate permanent structural and non-structural BMPs as well as for the removal and/or stabilization of sediments resulting from the Permittee's construction activities, which were deposited into unnamed tributaries of Mill Creek as follows:

1. 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 stormwater 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*. Said BMPs shall be adequate to prevent sediment in stormwater from leaving the construction site and shall also be adequate for the control of other pollutants in stormwater runoff discharging into waters of the State from the construction site.

2. Part 2 of this plan shall ensure that the unnamed tributaries of Mill Creek are returned to their pre-construction condition unless a determination is made that such a return to pre-construction conditions would not be feasible without causing significant damage to fish, wildlife, and to the integrity of the stream channels. If such a determination is made, a complete justification shall be included with Part 2 of the plan along with the data on which the determination is made. If such a determination is made, Part 2 of the plan shall ensure that the said water is returned to pre-construction

conditions to the extent feasible, as defined above, and it shall ensure that said waters will achieve compliance with applicable water quality standards.

3. Part 2 of the plan shall be drawn to accomplish its objectives in consideration and accounting for the estimated amount of sediment discharged into the Water of the State. At a minimum, Part 2 of the plan shall address the method(s) of sediment removal (i.e., the use of suction dredges, floating turbidity screens, etc.) and the disposal (i.e., upland disposal areas, methods of dewatering and stabilization, treatment of water removed from sediments prior to discharging to waters of the State, etc.). The Department may, at its discretion, provide comments to the Permittee on the plan after its submission.

4. Additionally, a qualified, credentialed professional must certify that the plan will satisfy the requirements of this paragraph (paragraph B and sections 1-4). For the purposes of this Consent Order, a qualified, credentialed professional shall include a professional engineer (PE) licensed to practice in Alabama, and a Certified Professional in Erosion and Sediment Control (CPESC) as determined by the Soil and Water Conservation Society (SWCS) and the International Erosion Control Association (IECA). A credentialed, qualified professional may also be a registered professional landscape architect, or other credentialed professional (registered land surveyor, registered geologist, registered forester, etc.) with the necessary education, proven experience, and professional certification acceptable to the Department. The credentialed professional must be familiar with current industry standards for erosion and sediment controls and must be able to inspect and assure that structural and nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of ALG610000. Pursuant to ADEM Admin. Code Chap. 335-6-3 a professional engineer (PE) registered in the state of Alabama must certify the design and construction of structural practices such as SPCC plan containment structures, dam construction, etc. The plan will be subject to Departmental review and approval. However, the plan shall be implemented immediately. In the event the Department makes comments on the plan, the plan will be immediately modified where appropriate to address the Department's comments, and the modifications shall be immediately implemented.

E. That no later than thirty (30) days after the effective date of this Consent Order, the Permittee shall have completely and correctly implemented said plan, and the Permittee shall submit a certification from a qualified, credentialed professional stating that the plan has been completely and correctly implemented.

F. That the Permittee shall conduct the monthly inspections required by Part I. B. of 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 day of the month following the month in which the inspection is conducted. The Department may release the Permittee from the requirements of this paragraph regarding the monthly submittal of the inspection reports upon the submission of a written request for such if the Permittee has been in compliance with the requirements of ALG610000 and this Consent Order for twelve (12) consecutive months. Said request shall include copies of all data or other reports necessary to show compliance for the appropriate time period. Said release, if granted, shall not relieve the Permittee from any inspection or any other requirements imposed by ALG610000.

G. That immediately and hereafter, the Permittee shall comply with all other terms, conditions and limitations of ALG610000 and Departmental Rules and Regulations.

H. That the Permittee shall prosecute the work, outlined in their qualified, credentialed professional's plans, continuously and diligently in the order and manner set out in the approved schedule. If the Permittee, or its qualified, credentialed professional finds it impossible for reasons beyond the control of the Permittee, such as unusually bad weather (as confirmed by the Weather Bureau), equipment breakdown (as justified by written documentation), or strikes by employees, or other reasons beyond the control of the Permittee, the Permittee's qualified, credentialed professional, at the direction of the Permittee, may request that the approved schedule be extended. Such request 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 seven (7) 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 Permittee, the Department may extend the time as justified by the specific circumstances.

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. 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 North Creek Properties, LLC for the violations identified herein.

K. That North Creek Properties, LLC 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, North Creek Properties, LLC 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. North Creek Properties, LLC also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, North Creek Properties, LLC shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility.

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 North Creek Properties, LLC 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 North Creek Properties, LLC shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

N. 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 North Creek Properties, LLC 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 21st day of April, 1999.

NORTH CREEK PROPERTIES, LLC

By: W. F. Bennett

DATE: 4-14-99

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: James Wilson
Director

DATE: 21st April 99