

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

J.P. DEVELOPMENT AND LAND
DEVELOPMENT, INC.
LEA ANNE GARDENS
TRUSSVILLE, ALABAMA

ORDER NO. 98-088-CMNPS

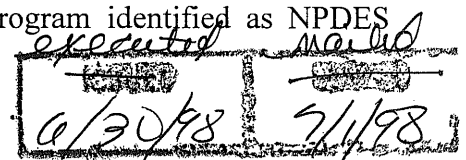
FINDINGS

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. Jerry Tortorigi (hereinafter, "Tortorigi") is the development manager and responsible party for the Lea Anne Gardens site. Lea Anne Gardens is an apartment construction site located in Jefferson County, 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. On March 13, 1998, the Department issued authorization to J. P. Development and Land Development, Inc. (hereinafter, "JP") to operate under the NPDES program identified as NPDES



General Permit No. ALG610000. The authorization number is ALR 102421. The NPDES permit regulates JP's discharges directly to Turkey 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") which adequately controls, eliminates, or reduces pollutants in stormwater runoff.

5. On May 5, 1997, an inspection was conducted at Lea Anne Gardens, and Department personnel determined that BMPs were not being maintained and that sediments were leaving the site. A Warning Letter was sent to the permittee, as a result of this inspection. On May 28, 1997, the permittee replied to the Warning Letter stating that BMPs were being improved.

6. On June 6, 1997, an inspection was conducted at Lea Anne Gardens, and it was found that the BMPs were not being maintained, sediments were leaving the site, and the facility identification, as required by NPDES General Permit No. ALG610000, was not displayed. A Notice of Violation ("NOV") was sent to the permittee on August 1, 1997.

The NOV required the permittee to file with the Department a full report signed by the owner and certified by a certified, qualified professional. The report, at a minimum, was to include: an updated design and construction plan for the site including a comprehensive, long-term BMP plan detailing the structural and nonstructural practices to be implemented and maintained; a proposed, detailed compliance schedule, with all work to be completed by August 11, 1997, or a Department approved alternate date; and the last six months inspection reports. The permittee submitted the plan with the completion dates as requested, but did not submit the last six months' inspection reports.

7. A follow-up inspection was conducted at Lea Anne Gardens on January 7, 1998. As a result of this follow-up inspection, it was noted that adequate BMPs had not been implemented nor maintained and the problem, sediments leaving the site, was still ongoing. A second NOV was sent to

the permittee on February 2, 1998. This NOV required the permittee to file with the Department a full report signed by the owner and certified by a credentialed, qualified professional. The report, at a minimum, was to include: an updated design and construction plan for the site including a comprehensive, long-term BMP plan detailing the structural and nonstructural practices to be implemented and maintained; a proposed compliance schedule; and the last six months inspection reports. The permittee did not submit the requested report or the compliance schedule. The permittee submitted an inspection report conducted March 7, 1998, and dated March 9, 1998.

8. A follow-up inspection was conducted on March 9, 1998. As a result of this follow-up inspection, a preliminary evaluation form marked "warning", was signed for by the permittee on March 10, 1998. The permittee was to reply within seven (7) days. The permittee has failed to reply. The permittee has also violated § 22-22-9(e) Code of Alabama 1975, by failing to submit reports as required by the Department's NOV's dated August 1, 1997 and February 2, 1998.

9. JP 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 JP 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, JP 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, Tortorigi shall pay to the Department Two Thousand Five Hundred Dollars (\$2,500) in full and final settlement for the past violations cited herein.

B. That the permittee shall submit to the Department within thirty (30) days 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.

C. That in addition to the fixed penalties assessed herein, JP shall pay stipulated penalties to the Department as follows: for every week after the above-mentioned thirty-day period that the permittee fails to submit the certification as outlined in paragraph B, herein, the permittee shall pay \$500.00 per week, and shall not exceed \$10,000.00. Total payment of said penalty shall be due seven (7) calendar days after the due date of the certification.

D. Nothing in the foregoing schedule shall relieve JP 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 JP of any liability for any violations occurring at the facility following issuance of this Consent Order, except that no further civil penalties for the violations identified in this Consent Order shall be assessed beyond those stipulated in paragraph C herein.

E. That all stipulated penalties identified herein are to be paid as identified in paragraph C herein. The Department is under no obligation to notify JP of the existence of any violations which

prompt stipulated penalties or to demand payment of same.

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. 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 JP for the violations identified herein.

H. That JP 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, JP 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. JP also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, JP shall be limited to the defenses of Force Majeure.

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

K. 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 JP 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 30th day of June, 1998.

JERRY TORTORIGI
LEA ANNE GARDENS

By: _____

DATE: _____

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: _____

Director

DATE: _____