

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

ALABAMA CAPITAL CORPORATION

MOBILE, ALABAMA

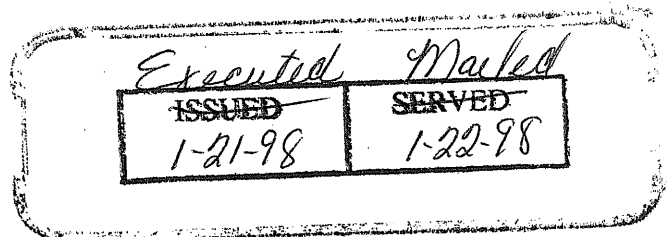
CONSENT ORDER NO. 98-047-CWP

MNRS

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, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the regulations promulgated thereto and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "ADEM" or "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 with the consent of Alabama Capital Corporation, the Department makes the following **FINDINGS**:

1. Schillinger Plaza Joint Venture II and Schillinger Plaza Joint Venture (hereinafter collectively "SPJV") operated a construction site in Mobile County ("the project") which has since been abandoned. As a result of earth disturbing activities at the site, the project discharges contaminated stormwater to an unnamed tributary of Second Creek, a water of the state, which is classified as suitable for fish and wildlife.
2. Alabama Capital Corporation, by virtue of foreclosure on July 2, 1997 of a loan to SPJV, is now owner of the project.
3. Code of Alabama (1975), §22-22-9(i)(3) and ADEM Admin. Code



R. 335-6-6-.03(a) provide that no person may discharge pollutants into waters of the state without a permit therefor. Discharges as a result of construction activities may be authorized pursuant to either an individual NPDES permit or coverage under NPDES General Permit ALG610000.

4. On June 5, 1997, an inspection by Department personnel revealed a discharge of pollutants from the project into an unnamed tributary of Second Creek, a water of the state. An analysis of a sample of the discharge revealed total suspended solids of 7180 mg/l.

5. Inspections of the project on August 2, 1996 and August 29, 1996 also had revealed discharges of sediment from the project to an unnamed tributary of Second Creek, a water of the state.

6. ADEM Admin. Code R. 335-6-10-.06(a) requires that "[s]tate waters shall be free from substances attributable to sewage, industrial wastes or other wastes that will settle to form bottom deposits which are unsightly, putrescent or interfere directly or indirectly with any classified water use." Department personnel have determined that, due to a lack of adequate Best Management Practices ("BMPs"), stormwater runoff from the project has deposited significant amounts of sediment into the unnamed tributary of Second Creek, a water of the state, which interferes both directly and indirectly with the water use classification of that water.

7. Alabama Capital Corporation, while not an owner or operator prior to July 2, 1997 or in any way an agent of SPJV, and in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and NPDES Permit requirements, and without any admission of liability, has agreed to the terms of the following Consent Order.

8. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited 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 Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(18), 22-22-9(c) and 22-22-9(k), as amended, and with the consent of Alabama Capital Corporation, the Department hereby **ORDERS**:

A. That immediately upon receipt of notice of this Order, Alabama Capital Corporation shall continue to implement Best Management Practices and comply with NPDES General Permit ALG610000.

B. That not later than seven days after receipt of notice of this Order, Alabama Capital Corporation shall submit to the Department a complete Notice of Intent and applicable permit fees to obtain coverage under the Construction General Permit. Alabama Capital Corporation shall respond fully to any comments from the Department on the application within seven days of receipt of said comments.

C. That Alabama Capital Corporation has heretofore submitted to the Department an acceptable plan for implementing and maintaining appropriate permanent structural and non-structural BMPs that are adequate to prevent or minimize to the extent practicable sediment and other pollutants in stormwater runoff from being discharged into waters of the State. This plan, at a minimum, meets the standards found in the U.S. Environmental Protection Agency document entitled "Stormwater Management for

Construction Activities." Said plan has heretofore been implemented and is certified by a qualified professional.

D. That not later than thirty days after receipt of notice of this Order, Alabama Capital Corporation shall submit to the Department a certification from the plan designer that the BMP plan has been implemented in accordance with the plans submitted to the Department.

E. That not later than thirty days after receipt of notice of this Order and continuing each and every day thereafter, Alabama Capital Corporation shall comply with applicable provisions of the Alabama Water Pollution Control Act and its implementing regulations, and with the requirements of the General Stormwater Permit.

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 the 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 alleged in this Order with respect only to Alabama Capital Corporation, its Directors, Officers, and all persons or entities acting under or for them.

H. That Alabama Capital Corporation 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, Alabama Capital Corporation agrees that with respect to any action brought by the Department to compel compliance

with the terms of the agreement, that Alabama Capital Corporation shall not contest the Findings or the Order set out in this Consent Order.


J. The sole purpose of this Consent Order is to resolve and dispose of all allegation 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 an Order as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Alabama Capital Corporation shall not object to such future orders, litigation, or enforcement action based upon the issuance of this Consent Order if future Orders, litigation or other enforcement actions address new matters not raised in this Consent Order.

K. That Alabama Capital Corporation, its Directors, Officers, and all persons or entities acting under or for them, shall be relieved from any liability or responsibility for any violation of any applicable law, ordinance, act, permit, or regulation occurring at the project on or after the transfer of ownership of the property by virtue of Statutory Rights of Redemption or otherwise. Alabama Capital Corporation hereby agrees to notify Department personnel of the name and address of the subsequent owner of the project within seven days of said change of ownership.

L. 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 Alabama Capital Corporation hereby waives any right to a conference prior to the execution of the Consent Order or any right to a hearing before the

Environmental Management Commission solely with respect to the instant Consent
Order..

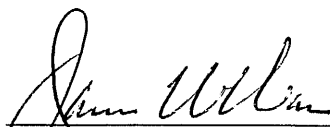
ALABAMA CAPITAL
CORPORATION


By: David C. De Laney

Its: President

Date: January 12, 1998

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


James W. Warr
Director

Date: 21 Jan 98