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DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

August 28, 2015

CERTIFIED MAIL

B. Keith Pennington
The Health Care Authority for Medical West,
An Affiliate of UAB Health System
995 9th Avenue SW
Bessemer AL 35022

RE: Final Consent Order 15-090-CLD
NPDES Permit No. ALR10AO12
Jefferson County (073)

Dear Mr. Pennington:

Please find the enclosed Special Order by Consent Order which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of The Health Care Authority for Medical West, an Affiliate of UAB Health System.

The draft order was made available for public review for a period of 30 days beginning on July 1, 2015. Public comments were received. Response to the comments received is attached for your reference.

The enclosed Special Order by Consent is effective immediately. Please note that the assessed civil penalty is due in full within 45 days.

Should you have any questions regarding the order please contact Derick E. Houston, by email at deh@adem.state.al.us or by phone at (205) 942-6168.

Sincerely,

Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: ECO/45540

Enclosure

cc: Thomas L. Johnston, ADEM
Valerie Jackson, ADEM
Lynn Battle, ADEM
Birmingham Branch, ADEM
Rebecca Patty, ADEM



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

THE HEALTH CARE AUTHORITY FOR MEDICAL WEST,)
AN AFFILIATE OF UAB HEALTH SYSTEM)
MEDICAL WEST FREESTANDING EMERGENCY CENTER)
HOOVER, T19S, R3W, S28)
JEFFERSON COUNTY, ALABAMA)
NPDES AUTHORIZATION NO. ALR10AO12)

ORDER 15-090-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and The Health Care Authority for Medical West, an Affiliate of UAB health System (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (2006).

STIPULATIONS

1. The Operator is an Alabama corporation constructing the commercial development site, Medical West Freestanding Emergency Center (hereinafter "Facility") located in T19S, R3W, S28 off of Alabama Hwy 150, in the City of Hoover, Jefferson County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary of Scout Creek, a water of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 to 1387 (2006).

In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 to 14 (2006 Rplc. Vol.).

4. The following references and acronyms are used in this Consent Order and, when used, shall have the meaning of the name or title referenced below.

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NTU	Nephelometric Turbidity Unit
QCP	ADEM-recognized Qualified Credentialed Professional

5. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On August 1, 2014 the Operator submitted to the Department an NOI requesting NPDES coverage under NPDES General Permit ALR100000 (hereinafter "Permit") for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted authorization ALR10AO12 to the Operator on August 1, 2014. The Permit is scheduled to expire on March 31, 2016.

7. Pursuant to Part III. A. of the Permit, the Permittee shall design, install, and maintain effective erosion controls and sediment controls, appropriate for site conditions. Sediment control measures, erosion control measures, and other site management practices must be properly selected based on site-specific conditions, must meet or exceed the technical standards outlined in the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas published by the Alabama Soil and Water Conservation Committee (hereinafter the "Alabama Handbook") and the site-specific CBMPP prepared in accordance with Part III. D.

8. Pursuant to Part III. D. of the Permit, construction activity may not commence until a CBMPP has been prepared in a format acceptable to the Department and certified by a QCP as adequate to meet the requirements of this permit. The Permittee shall properly

implement and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.

9. Pursuant to Part 1. C. 9. of the Permit, the Permittee is not authorized to discharge stormwater where the turbidity of such discharge will cause or contribute to a substantial visible contrast with the natural appearance of the receiving water.

10. Pursuant to Part 1. C. 10. of the Permit, the Permittee is not authorized to discharge stormwater where the turbidity of such discharge will cause or contribute an increase in the turbidity of the receiving water by more than 50 NTUs above background.

11. The Operator consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

12. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

DEPARTMENT'S CONTENTIONS

A. During an inspection of the Facility on December 23, 2014/January 2, 2015, the Department observed and documented that the Operator had not properly implemented and maintained effective BMPs, although NPDES construction activity had commenced and was continuing, in violation of Parts III. A. and D. of the Permit.

B. During the December 23, 2014/January 2, 2015 inspection, the Department observed and documented that the Operator had contributed to an increase of more than 50 NTUs in turbidity and caused a substantial visible contrast in the natural appearance of the receiving water, in violation of Parts 1. C. 9. and 10. of the Permit.

C. On January 7, 2015, a NOV was sent to the Operator by the Department as a result of the December 23, 2014/January 2, 2015 inspection. The NOV notified the Operator of deficiencies documented at the Facility and requested that the Operator to submit to the Department, within ten days of receipt of the NOV, a response showing

steps that were taken at the Facility to correct the noted deficiencies. The requested response was received by the Department on January 24, 2015.

D. During an inspection of the Facility on February 17, 2015, the Department observed and documented that the Operator had not properly implemented and maintained effective BMPs, although NPDES construction activity had commenced and was continuing, in violation of Parts III. A. and D. of the Permit.

E. During the February 17, 2015 inspection, the Department observed and documented that the Operator had contributed to an increase of more than 50 NTUs in turbidity and caused a substantial visible contrast in the natural appearance of the receiving water, in violation of Parts 1. C. 9. and 10. of the Permit.

F. On February 27, 2015, a NOV Non-Compliance letter was sent to the Operator by the Department as a result of the February 17, 2015 inspection. The NOV Non-Compliance letter notified the Operator of deficiencies documented at the Facility.

Pursuant to Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation.

In arriving at this civil penalty, the Department has considered the following:

G. SERIOUSNESS OF THE VIOLATIONS: Considering the general nature of the violations, the magnitude and duration of the violations, their effects, if any on impaired waters, and lack of any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$16,000.00.

H. THE STANDARD OF CARE: In considering this factor, the Department noted that the violations, particularly the Operator's failure to implement and maintain effective BMPs and the water quality violation after the Department's January 7, 2015 NOV, were easily avoidable. Therefore, the Department enhanced the penalty by an additional \$12,000.00.

I. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator has delayed certain costs associated with maintaining proper BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional \$100.00.

J. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department has no evidence of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any previous violations not addressed above.

K. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

The civil penalty is summarized in Attachment 1.

OPERATOR'S CONTENTIONS

- A. Operator denies Department's contentions and allegations.
- B. Operator contends that prior to and continuing through the February 17, 2015 inspection, it had properly implemented and maintained effective BMPs on the site.
- C. That the Department failed to comply with the Permit during the February 17, 2015 inspection, by failing to present its credentials upon arrival at a site.
- D. That the Department's failures to comply with the requirements of the Permit lead the inspector to make a factually incorrect determination as to the BMP in place on the site.
- E. The Operator further denies that its actions lead to any increases in turbidity.
- F. The Operator states that it has complied with the terms of the Permit.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.) as well as the need for timely and effective enforcement.

The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator (hereinafter collectively, "Parties") agree to enter into this Consent Order with the following terms and conditions:

- A. That the Operator shall pay to the Department a civil penalty in the amount of \$15,000.00 in settlement of the violations alleged herein within forty-five days from the date of issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Operator agrees that all penalties due pursuant to this Consent 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
PO Box 301463
Montgomery, Alabama 36130-1463

C. The Operator agrees to take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. That, within five days of the date of issuance of this Consent Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. That, within ten days of the date of issuance of this Consent Order, the Operator shall submit to the Department the results of the QCP comprehensive inspection and a plan to return the Facility, offsite conveyances, and affected State waters to compliance with Permit requirements.

F. That, within ten days of the date of issuance of this Consent Order, the Operator shall submit to the Department a detailed plan for the removal and/or remediation of sediment and other pollutants deposited offsite and/or in State waters.

G. That, within thirty days of the date of issuance of this Consent Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and NPDES General Permit ALR100000, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

H. That, within seven days of the completion of the activities required in paragraph G above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and NPDES General Permit ALR100000 have been implemented, all

deficiencies have been corrected, and full compliance with the requirements of NPDES General Permit ALR100000, has been achieved at the Facility, offsite conveyances, and affected State waters.

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. 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.

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

L. 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 the Circuit Court of Montgomery County. The Operator also agrees that 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 the Operator's 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 have been beyond the reasonable control of the Operator) and which delays or prevents performance 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 working 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 circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

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 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 may 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.

N. That 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.

O. That this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

P. That final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

Q. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

R. That any modifications of this Consent Order must be agreed to in writing and signed by both Parties.

S. That, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

T. The Department and Operator shall each bear their own costs and fees as relates to this Consent Order.

Executed in duplicate with each part being an original.

THE HEALTH CARE AUTHORITY FOR MEDICAL WEST,
AN AFFILIATE OF UAB HEALTH SYSTEM

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

B Keith Pennington
(Signature of Authorized Representative)

B Keith Pennington
(Print Name of Authorized Representative)

Mandy Elliott
Lance R. LeFleur
Director
Date Signed: 8/28/15

Date Signed: 6/16/15

Executed in duplicate with each part being an original.

THE HEALTH CARE AUTHORITY FOR MEDICAL WEST,
AN AFFILIATE OF UAB HEALTH SYSTEM

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

B Keith Pennington

(Signature of Authorized Representative)

B Keith Pennington

(Print Name of Authorized Representative)

Date Signed: 6/16/15

Lance R. LeFleur

Lance R. LeFleur

Director

Date Signed: 8/28/15



Alabama Department of Environmental Management
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August 28, 2015

Ms. Sela S. Blanton
Bainbridge, Mims, Rogers, & Smith, LLP
The Luckie Building – Suite 415
600 Luckie Drive
Birmingham, Alabama 35223

RE: Response To Comments
The Health Care Authority for Medical West
An Affiliate of UAB Health System
Medical West Freestanding Emergency Center
NPDES No. ALR10AO12 --- Jefferson County (073)

Dear Ms. Blanton:

The Department has received your letter dated July 28, 2015 along with the enclosed photographs and videos that were submitted on behalf of the Trace Crossings Residential Association, Inc. (hereinafter, TCRA). The letter contained various comments regarding the Department's proposed issuance of a Consent Order to The Health Care Authority for Medical West, an Affiliate of UAB Health System (hereinafter, the Operator). The proposed issuance of the Consent Order was the subject of a public comment period that began on July 1, 2015 and ended on July 31, 2015. The Department appreciates your interest in this matter and has outlined below responses to the comments and enclosures contained in your letter.

Paragraph 1: No comment received and no response required.

Paragraph 2: TCRA asserts that the Operator was noncompliant with its permit throughout the course of the project and not just on isolated occasions documented by the Department in the proposed Consent Order. Your correspondence states that TCRA establishes this with photographic, video, and other evidence submitted with your correspondence. In addition, TCRA asserts that the quantities of sediment discharged were to such a degree that a sandbar was created in Scout Lake that was not present before the development and unauthorized discharges.

Paragraph 2 Response: The Department has received and reviewed the enclosed photos and videos provided with your correspondence. When initiating enforcement actions, the Department must rely on information/data that is collected by its staff and cannot rely on third party data. Thus, the proposed issuance of the Consent Order is based on observations and violations documented by the Department's inspectors during their inspection activities. In addition, the proposed Consent Order requires the Operator to submit to the Department a detailed plan for the removal and/or remediation of sediment deposited by the Operator offsite and/or in State waters.

Paragraph 3: TCRA has estimated that over 4,000 cubic yards of material need to be removed from Scout Lake to restore it to its original condition. TCRA also requests that the Order be revised to require the Operator to fully remove and remediate all materials deposited into Scout Lake and restore it to its original condition.



Ms. Sela S. Blanton
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Paragraph 3 Response: As noted earlier, the proposed Consent Order requires the Operator to submit to the Department a detailed plan for the removal and/or remediation of sediment deposited by the Operator offsite and/or in State waters. This detailed plan will be submitted and certified by a Qualified Credentialed Professional (QCP) and will include a soil loss calculation based on the Revised Universal Soil Loss Equation (RUSLE) for the time period beginning when the Operator began construction and land disturbance at the facility to the time that the Department initiated formal enforcement proceedings. The RUSLE equation is a method of soil loss calculation that has been accepted by the Department in the past. It is recognized by the U.S. Environmental Protection Agency in determining Construction Rainfall Erosivity Waivers (EPA Document EPA 833-F-00-14) and is also recognized by the U.S. Department of Agriculture in USDA Handbook 703 – Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE). The results of the soil loss calculation will also contain an added margin of safety. The Department believes that the RUSLE calculation and the added margin of safety will be adequate to address the sediment loss from the facility.

Paragraph 4a: TCRA asserts that the proposed Consent Order should be revised to reflect the extensive number of alleged violations reflected in their photographs/videos and that the three (3) days of noncompliance noted in the proposed Consent Order are incorrect. TCRA also asserts that the proposed penalty amount is in error because it is based only on the three (3) dates of non-compliance documented in the proposed Consent Order.

Paragraph 4a Response: The proposed Consent Order contains specific findings of fact that the Department has documented during its inspection activities. In addition, the Department has considered the factors enumerated in Ala. Code 22-22A-5(18)(c)(2006 Rplc. Vol. and 2014 Cum. Supp.) in determining the penalty amount. As a result, the Department has concluded that the proposed penalty amount is appropriate.

Paragraph 4b: TCRA requests that the Department require the Operator to fully remove and remediate all materials deposited into Scout Lake and restore it to its original condition.

Paragraph 4b Response: Please see the above response to Paragraph 3.

Paragraph 4c: TCRA requests that the Department revise the Order to allow TCRA to review and comment on the plan required by paragraph F of the Order and require the Operator to cooperate with TCRA to secure reasonable access to perform the remedial work required by paragraph G.

Paragraph 4c Response: The detailed plan for removal and/or remediation of sediment deposited offsite and/or in State waters required in paragraph F of the proposed Consent Order will provide the Department with information related to the coordination with affected land owners regarding access. In addition, the plan will provide the Department with details regarding the proposed method of sediment removal, storage of removed material, final deposition of that material, as well as best management practices to be implemented during the removal and storage process.

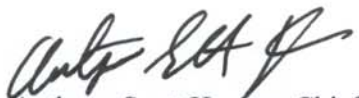
Ms. Sela S. Blanton
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The plan will also provide the Department with details for the stabilization of any access areas (ingress and egress locations) and staging areas along with a schedule of activities in which work is to be completed. Furthermore, the plan will be placed within the Department's electronic filing system (e-File) and will be available to the public once it is accepted by the Department.

Based upon our review of all comments submitted on the proposed issuance of the Consent Order, the Department has determined that no changes to the proposed Consent Order are necessary. The purpose of issuing the Consent Order is to ensure that the Operator corrects all deficiencies and performs remediation of identified impacts to the extent practicable to achieve compliance with the requirements of the Alabama Water Pollution Control Act, ADEM Admin. Code Ch. 335-6-12, applicable stormwater regulations, and NPDES General Permit ALR100000. However, the Department can initiate additional enforcement actions, if necessary, to effect compliance with those requirements.

In the event you have any questions regarding this matter, please feel free to contact Mr. Derick E. Houston at (205) 942-6168.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Scott Hughes', is written over the typed name.

Anthony Scott Hughes, Chief
Field Operations Division

ASH/deh

File: RTC/45540

Cc: Birmingham Branch, ADEM
Rebecca Patty, ADEM