

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

WILD CANYON, LLC

JEFFERSON COUNTY, ALABAMA

CONSENT ORDER NO. 00-074-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, the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, 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 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. Wild Canyon, LLC (hereinafter, "the Permittee") operates a construction site for a residential subdivision known as Wild Canyon Apartments located in Jefferson County off the old Montgomery Highway.

2. The Alabama Department of Environmental Management 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.

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3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the state water pollution control agency for the purposes of the federal Clean Water Act, 33 U.S.C. §§ 1251 through 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. On 22 December 1995, the Permittee received Authorization # ALR102340 to conduct its construction activities pursuant to NPDES General Permit # ALG610000 which regulates stormwater runoff from construction, excavation, land clearing, other land disturbance activities and associated areas and authorizes discharges of stormwaters Shades Creek, a water of the State which is classified as a Fish and Wildlife stream. When that authorization expired, the Permittee applied for and received a reauthorization which was issued on 24 April 1998.

5. Part II, B., 2., a., of NPDES General Permit ALG610000 requires the Permittee to prepare and implement a Best Management Practices (BMP) Plan which adequately controls, eliminates, or reduces pollutants in stormwater runoff.

6. Part II,C,(3) of the NPDES General Permit #ALG610000 requires the Permittee to display facility identification at the site.

7. On 18 March 1998 an inspection was conducted by Department personnel at Wild Canyon Apartments. This inspection noted that silt fence had some swags in it and that it would not be adequate in a rain event. In addition, it was noted that Part II,C,(3) of NPDES General Permit #ALG610000 had been violated by the failure to display facility identification as required. A response from the Permittee was received which stated that the problems would be addressed.

8. On 19 March 98 another inspection was conducted at Wild Canyon Apartments. A Preliminary Inspection/Evaluation Report Transmittal was left on site along with the inspection report. The report said that the hillside had been denuded. Also, a rock check dam was built out of large rock and did not provide adequate filtering capability because of the large gaps. In addition, a silt fence was being used in high flow areas, and the sediment basin appeared to be too small for the site. A response was received from the Permittee which addressed the problems and said that they would be corrected.

9. On 19 April 1999 another inspection was conducted by Department personnel at Wild Canyon Apartments. Some BMPs had been implemented but were not maintained and were not effective. Silt fencing had not been installed correctly and was down in some areas. Also, the slope along Old Montgomery Highway had not been stabilized. Additionally, sediments were noted entering a ditch that leaves the site, and Part II,C,(3) of NPDES General Permit #ALG610000 had been violated by the failure to display facility identification as required. A response was received from the Permittee that stated the BMPs would be improved.

10. Department personnel conducted another inspection at Wild Canyon Apartments on 3 August 1999. BMPs had still not been maintained and were not effective. BMP improvements that were promised in response to previous inspections had not been implemented. Additionally, erosion was noted on the site, inlets had not been protected, and silt was noted leaving the site through ditch along Old Montgomery Highway. Also, Part II,C,(3) of NPDES General Permit #ALG610000 was still being violated by the failure to display facility identification as required.

11. The Permittee neither admits nor denies the allegations herein, but in a continuing effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Permittee has agreed to the terms of this Consent Order.

12. 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 Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), and with the consent of the Permittee, the Department ORDERS and the Permittee AGREES:

A. That, not later than thirty (30) days after execution of this Consent Order, the Permittee shall be required to pay to the Department a civil penalty in the amount of \$4000.00 for the violations cited herein.

B. That, not later than fourteen (14) days after execution of this Consent Order, the Permittee shall prepare and submit to the Department a plan for the removal or stabilization of all sediments deposited off site. This plan must be designed by a credentialed, qualified professional licensed to practice in Alabama and shall ensure that there is no impairment of water quality of any waters of the State.

C. That, not later than fourteen (14) days after execution of this Consent Order, the Permittee shall prepare and submit to the Department 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 "Stormwater Management For Construction Activities". In addition, this plan must be certified by a credentialed, qualified professional licensed to practice in Alabama. If the plan submitted to the Department is not sufficient to accomplish the aforementioned tasks, it shall be modified immediately by the Permittee so that it does accomplish the task. This plan shall be implemented not later than thirty (30) days after execution of this Consent Order.

D. That, not later than 45 days after execution of this Consent Order, the Permittee shall submit to the Department a certification by a credentialed, qualified professional licensed to practice in Alabama that the BMP plan has been fully implemented.

E. That, commencing immediately upon the execution of this Consent Order and continuing hereafter until such time as the Permittee is released from this requirement by the Department, the Permittee shall conduct the monthly inspections required by Part I.B. of NPDES General Permit #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 shall 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 is in compliance with the requirements of NPDES General Permit #ALG610000 and this Consent Order for 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 NPDES General Permit #ALG610000. The Department may also release the Permittee from the requirements of this paragraph at any time if the Permittee requests termination of its permit on appropriate Department forms, and the Department approves said request. This will require the site to be completely developed with discharge of pollutants to waters of the State minimized.

F. 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 that are alleged in this Order.

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

H. That, for purposes of this Consent Order only, the Permittee 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 Permittee also agrees that, in any action brought by the Department to compel compliance with the terms of this agreement, the Permittee shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility.

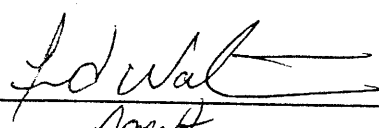
I. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Permittee which would constitute possible violations not addressed in this Consent Order, then such 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 Permittee shall not object to such

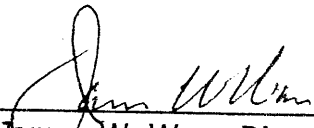
future orders, litigation or enforcement action based on the issuance of this Order if further Orders, litigation or other enforcement action address matters not raised in this Order.

J. 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 parties do hereby waive any hearing on the terms and conditions of same.

WILD CANYON, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 
Its: Agent


James W. Warr, Director

DATE: 2-1-2000

DATE: 7 Feb 2000