



in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 through 1387, as amended. 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. ADEM Admin. Code R. 335-6-6-.03(a) provides that “no person shall discharge pollutants into waters of the state without first having obtained a valid NPDES Permit or coverage under a valid General NPDES Permit”. ADEM Admin. Code R. 335-6-6-.03(b) states that “no person required to apply for a stormwater discharge permit by 40 CFR 122.26 (1994) shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit or for coverage under a valid General NPDES Permit. In the case of stormwater discharges resulting from construction or land disturbance that exceeds five (5) acres, the requirements of NPDES General Permit ALG610000 are applicable to the party responsible for said construction and/or land disturbance.

5. Part II, A., 3., of NPDES General Permit No. ALG610000 states:

“This permit is designed to provide coverage for construction or other land disturbance activity regardless of size. Federal regulations (40 CFR 122) and Departmental regulations regarding discharges of stormwater in effect on the issuance date of this General Permit, require an operator/owner to apply for and obtain a National Pollutant Discharge Elimination System (NPDES) Individual or General Permit prior to conducting any non-exempt construction or land disturbance that exceeds five acres or is part of a common plan for development or sale which might eventually exceed five acres or is part of a common plan for development or sale which might eventually exceed five acres. This includes requiring permit coverage for disturbance activities less than five acres that are part of, adjacent to, or associated with a larger common plan of development or sale that may eventually exceed five acres...” In addition Part II, A., 3., also states, “the permittee, operator, owner, developer, home builder(s), property owners association, etc., separately or collectively must retain coverage for the site, including subdivision developments or other phased developments, until all disturbance activity, including individual home construction, is substantially complete. Coverage must be retained until all disturbed areas have been reclaimed, water quality remediation has been achieved, or permit coverage has been obtained by another operator(s). The regulated disturbance includes associated areas utilized for support activities such as vehicle parking, equipment or supply storage areas, material stockpiles, temporary office areas, access roads, etc. and pre-construction activities performed in advance or in support of construction such as logging, clearing, dewatering, etc.”

6. The Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-9 (i)(3) as amended states, “every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.”

7. An inspection of the site by Department personnel on November 1, 2002, revealed that construction and related activity exceeding five (5) acres had commenced without a permit authorization having been obtained.

8. The Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-9 (i)(3) as amended states, “every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.”

9. The inspection on November 01, 2002, by Department personnel found the Highway 36 site in noncompliance for failure to implement adequate BMPs, with the concomitant discharge of a pollutant to waters of the State without first having obtained a valid NPDES Permit or coverage under a valid General NPDES Permit, in violation of the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-9 (i)(3).

10. This Consent Order addresses only those violations of the Department’s Water Quality Program covered in ADEM Admin. Code Div. 335-6, which resulted from actions or inactions by Robert Burgkart at the above-referenced site. Potential violations of other regulatory programs administered by the Department are reserved from this Consent Order.

11. Robert Burgkart neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Robert Burgkart has consented 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 cited in this Consent 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 on 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), as amended, and with the consent of Robert Burgkart, it is hereby ORDERED:

A. That, not later than thirty (30) days from the date of execution of this Consent Order, Robert Burgkart shall pay to the Department a civil penalty in the amount of One Thousand Dollars (\$1,000) for the violations cited herein. In determining the amount of the penalty amount set forth herein, the Department considered the statutorily prescribed factors set forth at Code of Alabama (1975), § 22-22A-5(18)(c).

B. That, not later than seven (7) days from the date of execution of this Consent Order Robert Burgkart shall obtain coverage under ADEM NPDES Permit No. ALG610000.

C. That, Robert Burgkart shall immediately cease all construction and related activities at Highway 36 site until such time as permit coverage is granted by the Department.

D. That, immediately upon the date of execution of this Consent Order, Robert Burgkart shall fully implement and regularly maintain temporary Best Management Practices (hereinafter "BMPs") adequate to prevent sediment in storm water from leaving the land disturbance. Said BMPs shall also be adequate to eliminate the discharge of sediment and other pollutants in stormwater runoff discharging into waters of the State of Alabama. Further, these BMPs shall conform to the EPA document entitled *Storm Water Management for Construction Activities* and shall contain other measures as necessary to eliminate the discharge of pollutants from this project.

E. That, not later than fourteen (14) days from the date of execution of this Consent Order, Robert Burgkart shall prepare and submit to the Department, for the Department's approval, a plan for implementing appropriate permanent structural and non-structural BMPs that are adequate to prevent or minimize, to the extent possible, sediment 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 manual referenced in Paragraph D above. Additionally, this plan must be certified by a qualified, credentialed professional licensed to practice in Alabama. If notified, by the Department, that the plan does not meet ADEM's approval, Robert Burgkart shall immediately take the action(s) necessary for departmental approval. This plan shall be implemented not later than thirty (30) days from the date of execution of this Consent Order, unless agreed otherwise, in writing, by ADEM.

F. That, not later than thirty (30) days, or such other time permitted, in writing, by ADEM, from the date of execution of this Consent Order, Robert Burgkart shall submit to the Department a certification by a qualified, credentialed professional licensed to practice in Alabama that the BMP plan has been fully implemented and is effective in controlling, minimizing or reducing sediment from entering stormwater runoff from the construction site. 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 qualified, credentialed 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 non-structural 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 NPDES General Permit ALG610000. Pursuant to ADEM Admin. Code R. 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 implemented immediately.

G. That, immediately upon the date of execution of this Consent Order and continuing thereafter, Robert Burgkart shall notify the Department of any visible sediment releases that occur as a result of unusual storm events or failure of existing erosion control measures.

H. That, immediately upon receipt of notification of coverage under NPDES General Permit No. ALG610000 and continuing thereafter, Robert Burgkart shall comply with all other terms, conditions, and limitations of said permit.

I. That Robert Burgkart shall conduct the monthly inspections required by Part I.B. of NPDES General Permit No. ALG610000. These inspections shall be conducted by a qualified, credentialed professional. Further, the inspections 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 Robert Burgkart from the requirements of this paragraph regarding the monthly submittal of the inspection reports upon the submission of a written request for such if Robert Burgkart is in compliance with the requirements of NPDES General Permit No. 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 Robert Burgkart from any inspection or any other requirements imposed by NPDES General Permit No. ALG610000. The Department may also release Robert Burgkart from the requirements of this paragraph at any time if Robert Burgkart requests on Department forms, and is approved, termination of his permit. This will require the site to be completely developed with discharge of pollutants to waters of the State minimized.

J. 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

K. 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.

L. 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.

M. That, Robert Burgkart is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. That, for purposes of this Consent Order only, Robert Burgkart 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, or any other court of competent jurisdiction. Robert Burgkart also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Robert Burgkart 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 Robert Burgkart, including its 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 be beyond the reasonable control of Robert Burgkart) and which delays or prevents performances 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 seven (7) business 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 Robert Burgkart, the Department may extend the time as justified by the specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

O. 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 shall 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 Robert Burgkart, 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.

P. 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 Robert Burgkart does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

Robert Burgkart

Robert Burgkart
Authorized Representative

President NCB, Inc
Title

Date Signed: MARCH 18, 2003

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

James W. Warr
James W. Warr
Director

Date Signed: 27 March 2003