

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
GULF LAND, L.L.C.)
)
and)
)
LAKEVIEW DRIVE HOMEOWNERS)
ASSOCIATION)
)
MOBILE COUNTY, ALABAMA)

ORDER NO. 00-097-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, 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 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 hereto, the Department makes the following FINDINGS:

1. Gulf Land, L.L.C. (hereinafter "the Permittee") operated a construction site known as Schillinger Town Center located in Mobile County, Alabama. The Permittee was authorized, pursuant to Authorization # ALR102758 and NPDES General Permit #ALG610000, to discharge pollutants to unnamed tributaries to Milkhouse Creek and Second Creek, waters of the State, subject to certain terms, limitations and conditions.

executed *mailed*
3/28/00 3/29/00

2. On October 16, 1997, the Department and the Permittee entered into Administrative Consent Order # 98-016-CMNPS, citing violations of NPDES General Permit #ALG610000 by the Permittee and requiring the Permittee to prepare and implement a plan for the removal of sediment from Optimist Lake and the Upper Milkhouse Creek basin as a means of remediating environmental damage caused as a result of polluted stormwater runoff from the site.

3. Despite the best efforts of the Permittee and its contractor, the ordered remediation has not occurred because the owners of the private property surrounding Optimist Lake have continuously refused to allow access to the lake across any of their property. This was done because the Lakeview Drive Homeowners Association ("the Association") was in litigation over the condition of the lake, which litigation was amended, following the entry of Administrative Consent Order # 98-016-CMNPS, to include claims against the Permittee, an affiliated company, the general contractor on the Schillinger Towne Center construction site, and the site work subcontractor, complaining of alleged sedimentation of the private lake.

4. The lawsuit in question has now been settled, and the Permittee and other defendants will, as part of the settlement, pay to the Association a sum of money in excess of the estimated cost of the remediation originally ordered to be carried out by the Permittee. The Association has informed the Department that it intends to utilize some of the settlement funds to remove sediment from the lake and that the removal will involve considerably in excess of 1,063 cubic yards of such sediment as required by Administrative Consent Order # 98-016-CMNPS.

5. The Permittee, joined by the Association, has requested the Department to amend the Consent Order so as to recognize the settlement of the lawsuit with the Association, including the payment of funds in excess of what was required to perform the work required by the original Consent Order, as satisfaction of the remaining obligations of the Permittee thereunder, and the Department is willing to modify the Order accordingly.

AMENDED CONSENT ORDER

Based upon the foregoing **FINDINGS** and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), as amended, and with the consent of the Permittee and the Association, the Department hereby **ORDERS**:

A. That Paragraphs C and D of Administrative Consent Order # 98-016-CMNPS are hereby revoked in their entirety, and the following paragraphs are substituted in their stead:

That, not later than 14 days after execution of this Consent Order, the Association shall submit to the Department a plan, prepared by a qualified credentialed professional, for the removal of sediment from Optimist Lake and the upper Milkhouse Creek basin as a means of remediating environmental damage caused as a result of polluted stormwater runoff from the site. The amount of sediment to be removed shall be at least 1,063 cubic yards. The plan shall include a detailed proposed completion schedule. The details and schedule of the plan are to be coordinated with and accepted by the Department. A qualified credentialed professional may be:

- a) A certified professional erosion and sediment control specialist as determined by the Soil and Water Conservation Society and the International Erosion Control Association;
- b) A professional engineer registered in the State of Alabama;
- c) A licensed landscape architect;
- d) A registered land surveyor;
- e) Other credentialed, qualified professional with proven experience in Best Management Practices implementation acceptable to the Department. Any professional in this category must be approved by the Department prior to commencing work.

That, not later than three days after receipt of the Department's comments on the plan, the Association shall modify the remediation plan in accordance with the Department's comments.

B. That, not later than the date approved by the Department for completion of the plan, the Association shall have completely implemented and completed the work called for in the approved plan.

C. That, not later than 30 dates after completion of the work called for by the approved plan, the Association shall have the qualified professional approved by the Department who designed and implemented the plan to certify to the Department that the plan was implemented as approved.

D. That the Association shall advise the Department in writing when the requirements of this Amended Consent Order have been implemented and, in response, the Department shall notify the Association in writing within 30 days of such notice whether it agrees or disagrees and the reasons therefore.

E. That this Amended Consent Order shall apply to and be binding upon all parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Amended 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 Amended Consent Order, to execute the Amended Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Amended Consent Order is intended to operate as a full resolution of the violations which were alleged in Administrative Consent Order # 98-016-CMNPS.

G. That the Association 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 Association 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, the Circuit Court for Montgomery County, Alabama. The Association also agrees in any action brought by the Department to compel compliance with the terms of this Amended Consent Order, that the Association shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility.

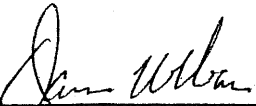
I. That the sole purpose of this Order is to resolve and dispose of all allegations and contentions contained in Administrative Consent Order # 98-016-CMNPS.

J. That, by agreement of the parties, this Amended Consent Order shall be considered final and effective immediately upon signature of all parties. This Amended Consent Order shall not be appealable, and the Association hereby waives any right to a conference prior to the execution of


this Amended Consent Order or any right to a hearing before the Environmental Management Commission.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

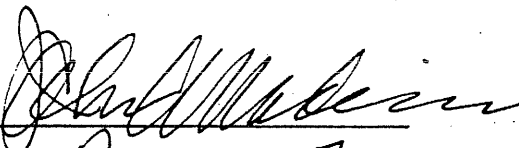
GULF LAND, L.L.C.

By: 
James W. Warr
Director

Date: 28 March 2000

By: 
Its: Manager
Date: 3-17-2000

LAKEVIEW DRIVE HOMEOWNERS ASSOCIATION

By: 
Its: President
Date: 3/3/2000