

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

January 9, 2014

CERTIFIED MAIL

RICK BENSON
BENSON CONSTRUCTION COMPANY
197 VANCEVILLE COUNTY LINE ROAD
TIFTON GA 31794

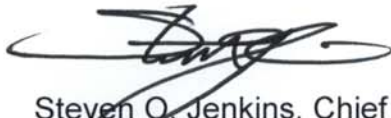
RE: CONSENT ORDER 14-023-CLD
Troy Golf Course
Pike County (109)
NPDES ALR10A964
Between McKinley Drive and S George Wallace Drive, Troy University Main Campus

Dear Mr. Benson:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Don Prempramot, Office of Field Services**, by email at dp@adem.state.al.us or by phone at (334) 394-4319.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

soj/dp File:ECO/43738

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

BENSON CONSTRUCTION COMPANY, INC)
TROY GOLF COURSE)
TROY, PIKE COUNTY, ALABAMA)
NPDES ALR10A964)
)

CONSENT ORDER 14-023-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Benson Construction Company, Inc., (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.

STIPULATIONS

1. The Operator is a Georgia corporation registered in the State of Alabama, which is constructing the Troy University Trojan Oaks Golf Practice Facility (hereinafter "Facility") located in T10N, R21E, S33, between McKinley Drive and S. George Wallace Drive, in Troy, Pike County, Alabama.
2. 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
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary
WL	Warning Letter

3. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an Unnamed Tributary to Persimmon Branch and Persimmon Branch, waters of the State.

4. 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.).

5. 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. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

6. Pursuant to ADEM Admin. Code r. 335-6-12-.05(2), all NPDES construction sites/activities in Alabama are required to fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the Operator's CBMPP that has been prepared by a QCP.

7. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(3) and 335-6-12-.28, the Operator is required to ensure that comprehensive inspections of the Facility, offsite areas and stormwater conveyances, and associated receiving waters are conducted according to a prescribed schedule, after significant precipitation, and as often as needed by a QCP, to ensure that effective BMPs have been properly designed, implemented, and maintained. Each day there is activity at the Facility, the Operator or other qualified person is required to observe that portion of the Facility where construction disturbance has occurred and report any apparent BMP deficiencies to the Operator or QCP.

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

9. On May 14, 2013, the Operator submitted to the Department an NOI requesting NPDES permit coverage for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted NPDES permit coverage ALR10A964 to the Operator on May 22, 2013. NPDES permit coverage ALR10A964 is scheduled to expire March 31, 2016.

10. ADEM Admin. Code r. 335-6-12-.21(1) provides that commencement and/or continuation of NPDES construction activity is prohibited unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements of ADEM Admin. Code chap. 335-6-12 and applicable requirements of ADEM Admin. Code div. 335-6. The CBMPP and any BMPs shall meet or exceed the technical standards of ADEM Admin. Code chap. 335-6-12, and

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").

11. ADEM Admin. Code r. 335-6-12-.06(3) requires the operator, upon the reduction in effectiveness, loss, or failure of a treatment facility or BMP, to control/suspend/cease construction until the BMP/control is restored. ADEM Admin. Code r. 335-6-12-.35(11)(a) requires the operator to take all reasonable steps, including cessation of construction, building, production, or other activities, to prevent/minimize any violation or to prevent/minimize any adverse impact of any violation of ADEM Admin. Code chap. 335-6-12. ADEM Admin. Code r. 335-6-12-.35(11)(b) requires the operator, upon the loss or failure of any treatment facility or BMP, to cease, suspend, reduce, or otherwise control construction or other activities as necessary until treatment is restored or effective BMPs have been repaired or installed.

12. ADEM Admin. Code r. 335-6-12-.21(5) requires the operator to ensure that effective BMPs are implemented to the maximum extent practicable to prevent offsite sedimentation and deposition of construction site wastes.

13. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10), operators are required to promptly take all reasonable steps to determine the nature and impact of non-complying discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

14. During an inspection of the Facility on July 3, 2013, the Department documented that, although NPDES construction activity had commenced, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code rs. 335-6-12-.06(3), 335-6-12-.21(1), 335-6-12-.21(5), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b).

15. The Operator has advised the Department that they were not actively working the construction site during the day of the inspection, but BMP installation and maintenance had taken place that morning, and heavy rains were occurring prior to and during the ADEM inspection.

16. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

17. The Department observed sediment, resulting from discharges at the Facility, offsite and in an UT to Persimmon Branch and Persimmon Branch during the July 3, 2013, inspection, in violation of ADEM Admin. Code rs. 335-6-12-.06(3) and 335-6-12-.35(10).

18. On July 11, 2013, the Department sent an NOV to the Operator as a result of the July 3, 2013, inspection. The NOV notified the Operator of deficiencies documented at the Facility and required the Operator to submit to the Department a BMP site assessment report and detailed plan for remediation/removal of sediment deposited offsite or in State waters for the Facility within ten days of receipt of the NOV. The NOV also required the Operator to submit to the Department within ten days of receipt of the NOV, certification by a QCP that all deficiencies at the Facility had been corrected.

19. On July 16, 2013, the Operator submitted a response to the July 11, 2013, NOV, including a document of work summary from June 24, 2013, through July 1, 2013.

20. On July 19, 2013, the Operator submitted a progress update regarding BMP installation at the site in response to the July 11, 2013, NOV.

21. On July 25, 2013, the Operator submitted a response prepared by a QCP to the July 11, 2013, NOV. The response advised that the Operator had replaced wood stake silt fence with wire back silt fence, installed silt savers, and was making preparations for permanent vegetation. The response also included photo-documentation advising that the deficiencies were corrected and that the permitted stream crossing had been removed, and that the stream bank stabilization activities, permitted under a Corps of Engineers Nationwide Permit 13, had been completed and the banks stabilized with coconut coir matting.

22. On August 1, 2013, the Operator submitted a response to the July 11, 2013, NOV, including a document of work summary from July 8, 2013, through July 12, 2013.

23. During an inspection of the Facility on August 20, 2013, the Department documented that, although NPDES construction activity had commenced, the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code rs. -6-12-.06(3), 335-6-12-.21(1), 335-6-12-.21(5), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b).

24. The Operator has advised the Department that heavy rains occurred at the site on August 18 and 19, 2013, and that the Operator's employees were onsite at 7:00 AM on August 20, 2103, and for the next two days, implementing/repairing BMPs and correcting damage from the significant storm event.

25. During the August 20, 2013, inspection by the Department, sediment resulting from discharges at the Facility were observed offsite and in an UT to Persimmon Branch and Persimmon Branch, in violation of ADEM Admin. Code rs. 335-6-12-.06(3) and 335-6-12-.35(10).

26. On September 20, 2013, the Department issued Cease Order 13-146-LD requiring the Operator to immediately stop work and cease all regulated disturbance, building, construction activity, and related activity at the Facility other than BMP implementation/maintenance that meets or exceeds the technical standards outlined in the Alabama Handbook, until the Operator, in a manner acceptable to the Department, implements effective BMPs and corrects all deficiencies at the Facility, offsite conveyances, and affected State waters.

27. The Operator has advised the Department that the Operator had completed work at the site on September 19, 2013, and had installed 972,094 square feet of sod, had sprigged the greens, and seeded and matted the remaining bare areas.

28. On September 25, 2013, the operator submitted an inspection report, based on an inspection conducted by the Operator on September 23, 2013, detailing site conditions, which included the stabilization of any remaining bare areas.

29. The Operator neither admits nor denies the Department's allegations. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, 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 violations 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:

A. 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 any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$11,000.

B. THE STANDARD OF CARE: In considering the standard of care manifested by the Operator, the Department noted repeated violations at the Facility after issuance of less formal enforcement. Thus, the Department enhanced the penalty by an additional \$2,800. The Department also noted that the failure to implement effective BMPs resulted in a violation of water quality standards for turbidity, and that effective BMPs were not implemented for work in the receiving stream resulting in sedimentation. These violations could have been avoided by continual implementation and maintenance of effective BMPs. Therefore, the Department enhanced the penalty by an additional \$16,500. In considering this factor, the Department noted that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements. However, the Department believes the base penalty is sufficient to address this factor.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator has delayed certain costs associated with implementing and maintaining effective BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty by an additional \$1,800.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Operator has advised that it undertook diligent efforts to effectively address the noted violations and to minimize or mitigate the effects of the violations upon the environment. The Operator has advised the Department that BMPs were continually corrected and additional BMPs were installed throughout the life of the project. The Operator has advised the Department that over the 155 days of construction, it rained on 77 days, with approximately 33 inches of rain falling over the active construction period. In addition, the Operator has advised the Department that the Operator spent an additional

\$186,539 to immediately sod the golf course rather than sprigging the golf course, which stabilized the bare areas immediately rather than allowing for a grow-in period of several months. In consideration of the efforts by the Operator to minimize and/or mitigate the effects of the violations upon the environment, the Department decreased the proposed penalty by \$32,000.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has documented previous violations by the Operator resulting in significant formal enforcement action(s). In consideration of the history of previous violations, the Department has enhanced the penalty by an additional \$5,500.

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

G. The civil penalty is summarized in Attachment 1.

H. It should be noted that this Consent Order 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.

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., as amended, 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 agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$5,600 in settlement of the violations alleged herein within forty-five days from issuance of this Consent Order. Failure to pay the civil penalty within forty-five days from 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, immediately upon the effective date of this Consent Order and continuing thereafter, to fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. The Operator agrees, unless relieved of this requirement in writing by the Department, that:

1. all inspections/evaluations shall be performed by a QCP;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of a QCP and shall be certified by a QCP;
3. all applications, plans, and information shall be certified by a QCP;
4. all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a QCP; and
5. all applications, plans, reports, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her QCP designation, how the inspection/work was conducted, and the results of the inspection/work.

E. The Operator agrees to submit any application, plan, information, report, or other submittal required by this Consent Order to:

Office of Field Services
Field Operations Division
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

F. The Operator agrees, within five days of the receipt of any written comments from the Department, to modify in writing any application, plan, information, report, or other submittal, and submit additional written information/clarification to the Department to address any comments made by the Department.

G. The Department and the Operator (hereinafter "Parties") agree 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.

H. The Parties agree 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.

I. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

J. 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 in 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.

K. The Parties agree 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.

L. The Parties agree 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.

M. The Parties agree that this Consent Order does not preclude, negate, or otherwise affect the Operator's obligation or liability to comply with any Federal, State or local laws, regulations, or permit requirements.

N. The Parties agree 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.

O. The Parties agree 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.

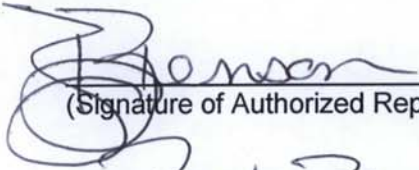
P. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

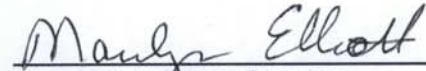
Q. The Parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to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

Executed in duplicate with each part being an original.

BENSON CONSTRUCTION COMPANY, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)


Lance R. LePleur, Director

Rick Benson
(Print Name of Authorized Representative)

Date Signed: 1/9/2014

Vice-President
Title

Date Signed: 11-7-13

ATTACHMENT 1 - PENALTY SYNOPSIS

Benson Construction Company, Troy Golf Course, ALR10A964

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Effective Best Management Practices (BMPs) not implemented and/or maintained	2	\$6,000	\$10,500	\$3,000
Discharge/accumulation of sediment offsite	1	\$5,000	\$8,800	\$2,500
Totals:	3	\$11,000	\$19,300	\$5,500
Economic Benefit*:				\$1,800
Sub-Total:				\$37,600
Mitigating Factors:				\$32,000
Ability to Pay*:				
Other Factors*:				
Final Penalty:				\$5,600

*Refer to the "Contentions" of the Order
for a description of each penalty factor.

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order 14-023-CLD upon the person listed below by sending the same, postage paid, through the United States Mail certified mail receipt# 9171999991703231099484, with instructions to forward and return receipt, to:

Benson Construction Company
197 Vanceville County Line Road
Tifton, GA 31794

DONE this 9th day of January, 2014.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Steven O. Jenkins
Chief, Field Operations Division
Alabama Department of Environmental Management