

and developer of the subdivision, sells lots to builders who construct single family dwellings on those lots. If construction activities are not properly managed, sediment and other pollutants in untreated stormwater runoff can be discharged into an unnamed tributary to Coosada Creek, a water of the State, classified for Fish and Wildlife.

2. The Department 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.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the State agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the FWPCA. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. The Department issued Authorization (ALR102956) to the Operator on January 30, 1998, to discharge treated stormwater under NPDES Construction Stormwater General Permit ALG610000. Part II., B. of ALG610000 requires implementation and regular maintenance of effective Best Management Practices (BMPs) to the maximum extent practical to prevent sediment and other pollutants in stormwater runoff from leaving the construction site.

5. On February 26, 2001, an inspection of the Columns Property site by the Department revealed ongoing untreated discharges of pollutants in stormwater runoff to an unnamed tributary to Coosada Creek, a water of the State. It was noted that some Best Management Practices (BMPs) had been implemented but were inadequate for the site and had not been maintained properly. A Warning letter was issued as a result of this inspection. As a result of the Warning letter, certification that BMP deficiencies were corrected by the permittee was received by the Department on August 24, 2001.

6. On September 5, 2002, an inspection of the Columns Property site by the Department revealed ongoing untreated discharges of pollutants in stormwater runoff to an

unnamed tributary to Coosada Creek, a water of the State. It was noted that some BMPs had been implemented but were inadequate for the site and had not been maintained properly. It was also noted that additional discharge points had been added without prior notification to the Department. A Notice of Violation was issued as a result of this inspection. After review of the Department's records it was noted that monthly inspection reports submitted annually by the Operator contained descriptions of stormwater runoff points different than observed in on-site inspections and other incorrect information. The Department contacted the Operator's Qualified Credentialed Professional (QCP) as notification of the deficiencies in the annual reports submitted to the Department.

7. On November 1, 2002, an inspection of the Columns Property site by the Department revealed ongoing untreated discharges of pollutants in stormwater runoff to an unnamed tributary to Coosada Creek, a water of the State. It was noted that some BMPs had been implemented but were inadequate for the site and had not been maintained properly. After review of the Department's records it was noted that monthly inspection reports submitted annually by the Operator contained incorrect information and was not corrected despite the prior notification from the Department. As a result of this inspection, the Department attempted to contact the Operator. The Department contacted the Operator's QCP several times concerning the continuing BMP deficiencies at the Columns Property. The Department required certification of effective BMP implementation and maintenance by the QCP by December 15, 2002. The permittee's records reflect that effective BMP implementation and maintenance was certified by the permittee's QCP on November 27, 2002.

8. On February 6, 2003, an inspection of the Columns Property site by the Department revealed ongoing untreated discharges of pollutants in stormwater runoff to an unnamed

tributary to Coosada Creek, a water of the State. It was noted that some BMPs had been implemented but were inadequate for the site and had not been maintained properly.

9. On February 13, 2003, an inspection of the Columns Property site by the Department revealed ongoing untreated discharges of pollutants in stormwater runoff to an unnamed tributary to Coosada Creek, a water of the State. It was noted that some BMPs had been implemented but were inadequate for the site and had not been maintained properly.

10. On February 28, 2003, the Operator submitted a complete Notice of Registration requesting NPDES permit coverage under ADEM Admin. Code Chapter 335-6-12 for construction activities at the Columns Property. On February 28, 2003, the Operator received registration for the Columns Property (ALHA01495).

11. The Operator 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 AWPCA, the Operator 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 Southern Boulevard Corporation, it is hereby ORDERED:

A. That, not later than forty-five (45) days after the execution date of this Consent Order, the Operator shall pay to the Department a civil penalty in the amount of Four-Thousand Dollars (\$4,000) 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), as amended.

B. 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

C. That Operator shall immediately, upon the date of execution of this Consent Order and continuing thereafter shall insure immediate and future compliance with the AWPCA, ADEM rules, and all NPDES permit coverage limitations, terms, and conditions for all sites/facilities, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order.

D. That immediately upon the effective date of this Consent Order, the Operator shall fully implement and regularly maintain temporary BMPs to control and to prevent sediment and other pollutants in untreated stormwater from leaving the construction site.

E. That within seven (7) days of the effective date of this Consent Order, the Operator shall prepare and submit for the Department's review and comment a Construction Best Management Practices Plan (CBMPP) detailing effective BMPs adequate to prevent sediment and other pollutants in stormwater from leaving the construction site and to ensure full compliance with the requirements of ADEM Admin. Code Chapter 335-6-12. The plan shall be prepared by a registered Professional Engineer (hereinafter "PE") licensed to practice in the State of Alabama or a Department recognized Qualified Credentialed Professional (hereinafter "QCP"). Within seven (7) days of receipt of any written comments from the Department, the

Operator shall modify the plan consistent with any comments made by the Department in writing.

F. That within seven (7) days of the effective date of this Consent Order the Operator shall submit a detailed plan prepared by a PE or QCP for the stabilization and/or removal of sediment and other pollutants from the Columns Property site deposited offsite and in an unnamed tributary to Coosada Creek, a water of the State. Within seven (7) days of receipt of any written comments from the Department, the Operator shall modify the plan consistent with any comments made by the Department in writing.

G. That within seven (7) days of the effective date of this Consent Order, the Operator shall submit a proposed compliance schedule certified by a PE or a QCP to accomplish the tasks in paragraphs E and F above within thirty (30) days of the effective date of this Consent Order.

H. That within thirty-five (35) days of the effective date of this Consent Order, the Operator shall submit a certification by a PE or a QCP that all deficiencies have been corrected, tasks required by paragraphs E and F above have been accomplished, and full compliance with the requirements of ADEM Admin. Code Chapter 335-6-12 has been achieved at the Columns Property site.

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 it 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 a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. 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 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 the Operator) 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 ten (10) 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 specific circumstances.

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 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 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, 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 Operator does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

SOUTHERN BOULEVARD CORPORATION

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
(Signature of Authorized Representative)

  
James W. Warr  
Director

SENIOR VICE PRESIDENT, CHIEF FINANCIAL  
OFFICER AND CHIEF INVESTMENT OFFICER  
\_\_\_\_\_  
Title

Date Signed: 09-22-03

Date Signed: 11-26-03