

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

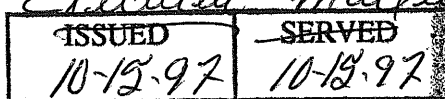
IN THE MATTER OF: )  
 )  
GREAT WHITE, LLC )  
 )  
TUSCALOOSA, ALABAMA )

ORDER NO: 98-015-CWP <sup>HNR5</sup>

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. Great White, LLC (hereinafter "the Permittee") is engaged in construction activities in Tuscaloosa, Alabama.
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.



3. The Permittee has obtained coverage under NPDES General Permit # ALG610000 authorizing the discharge of pollutants to an unnamed tributary of Cottondale Creek, a water of the state, which is classified as suitable for fish and wildlife.

4. 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.

5. Part II, C., 1., states, "the permittee shall promptly take all reasonable steps to mitigate and minimize or prevent any adverse impact on human health or the environment resulting from noncompliance with any limitations of this permit, including such accelerated or additional monitoring of the discharge and/or receiving waterbody as necessary to determine the nature and the impact of the noncomplying discharge."

6. Part II, E., 1., a., states that it is the Permittee's responsibility to comply with all conditions of the permit (ALG610000), and that any violation of the permit is a violation of the Alabama Water Pollution Control Act and the Federal Water Pollution Act.

7. An inspection of the facility was conducted on June 16, 1997. The following violations were noted:

- a. Permit authorization could not be verified for this construction project.

- b. The facility identification including the name of the Permittee, the permit authorization number, and the project or facility name was not displayed at the facility.
- c. Failure to implement adequate BMPs to control sedimentation and erosion.
- d. Failure to adequately protect culvert and storm drain inlets from entering sediments.
- e. Failure to stabilize slopes and other denuded areas at the facility.
- f. Unpermitted discharges of contaminated stormwater from the site.

8. A Notice of violation-Need to Apply Letter was issued to the owner on June 26, 1997.

9. A response to the Notice of Violation-Need to Apply dated June 11, 1997 was received by the Department. The response addressed the permit authorization for the facility. The facility was permitted as "Great White Mixed Use Development" and the permittee was Great White, LLC. All other violations were addressed within the response. However, due to the nature and severity of the violations, further enforcement was determined to be appropriate.

10. An on-site meeting was conducted on July 24, 1997. At the time of this meeting, it did not appear that any corrective measures had been implemented as a result of the June 26, 1997 Notice of violation.

10. The Permittee, in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and NPDES Permit requirements, and without any admission of liability, have agreed to the terms of the following Consent Order.

11. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited 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.

#### **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(18), 22-22-9(i), and 22-22-9(k), as amended, and with the Consent of the Permittee, the Department hereby **ORDERS**:

A. That immediately after the effective date of this Consent Order, the permittee shall implement temporary Best Management Practices (BMPs) adequate to prevent sediment in stormwater from leaving the construction site. Said BMPs shall also be adequate for the control of other pollutants in stormwater runoff discharges into waters of the State.

B. That no later than ten (10) days after the effective date of this Consent Order, the permittee shall submit a plan to the Department for implementing appropriate permanent structural and non-structural BMPs (Part 1) as well as for the removal of

sediments resulting from the permittee's construction activities, which were deposited into Cottondale Creek (Part 2).

1. Part 1 of this plan shall, at a minimum, meet the standards found in the EPA document entitled Stormwater Management For Construction Activities. Further, said BMPs shall be adequate to prevent sediment in stormwater from leaving the construction site and shall also be adequate for the control of other pollutants in stormwater runoff discharging into waters of the State from the construction site.

2. Part 2 of this plan shall ensure that Cottondale Creek is returned to its pre-construction condition unless a determination is made that such a return to pre-construction conditions would not be feasible without causing significant damage to fish, wildlife, and to the integrity of the stream channels. If such a determination is made, a complete justification shall be included with Part 2 of the plan along with the data on which the determination is made. If such a determination is made, Part 2 of the plan shall ensure that the said water is returned to pre-construction conditions to the extent feasible, as defined above, and it shall ensure that said waters will achieve compliance with applicable water quality standards.

3. Part 2 of the plan shall be drawn to accomplish its objectives in consideration and accounting for the estimated amount of sediment discharged into the Water of the State. This shall be accomplished by using the Universal Soil Loss Equation, the Modified Universal Soil Loss Equation, or another accepted method such as modeling or actual

measurements. At a minimum, Part 2 of the plan shall address the method(s) of sediment removal (i.e., the use of suction dredges, floating turbidity screens, etc.) and the disposal (i.e., upland disposal areas, methods of dewatering and stabilization, treatment of water removed from sediments prior to discharging to waters of the State, etc.). The Department may, at its discretion, provide comments to the permittee on the plan after its submission.

4. Additionally, a qualified, credentialed professional must certify that the plan will satisfy the requirements of this paragraph (paragraph B and sections 1-4). 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 credentialed, qualified 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 nonstructural 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 ALG610000. Pursuant to ADEM Admin. Code Ch. 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 immediately implemented. For every week after the due date in which this plan has not been submitted to the Department, the permittee shall pay to the Department the sum of Five Hundred Dollars (\$500). Payment of said penalty shall be due before close of business on Friday of each week after the plan is due to the Department but has not yet been submitted.

C. That no later than 30 days after the effective date of this Consent Order, the permittee shall have completely and correctly implemented said plan, and the permittee shall submit a certification from a qualified, credentialed professional stating that the plan has been completely and correctly implemented. For every week after the due date in which this certification has not been submitted to the Department, the permittee shall pay to the Department the sum of Five Hundred Dollars (\$500). Payment of said penalty shall be due before close of business on Friday of each week after the certification is due to the Department but has not yet been submitted.

D. That the permittee shall conduct the monthly inspections required by Part I. B. of 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 28<sup>th</sup> 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 has been in compliance with the requirements of 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 ALG610000.

E. That immediately and hereafter, the permittee shall comply with all other terms, conditions and limitations of ALG610000 and Departmental Rules and Regulations.

F. That the permittee shall prosecute the work, outlined in their qualified, credentialed professional's plans, continuously and diligently in the order and manner set out in the approved schedule. If the permittee, or its qualified, credentialed professional finds it impossible for reasons beyond the control of the Permittee, such as unusually bad weather (as confirmed by the Weather Bureau), equipment breakdown (as justified by written documentation), or strikes by employees, or other reasons beyond the control of the Permittee, the Permittee's qualified, credentialed



professional, at the direction of the Permittee, may request that the approved schedule be extended. Such request 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) 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 Permittee, the Department may extend the time as justified by the specific circumstances.

G. That the permittee shall pay to the Department Five Thousand Dollars (\$5,000.00) due no later than \_\_\_\_\_. The Department may file suit in the Circuit Court of Montgomery County, Alabama, to collect the entire unpaid amount of the penalty if the payment becomes in default and is not made before 5:00 PM of the day following a scheduled due date. The Department shall take no action to collect the penalty as long as the payment is made when scheduled.

H. That the cumulative stipulated penalties described in paragraphs B., and C., of this Consent Order for late submittal of plans or certifications shall under no circumstances exceed Five Hundred Dollars (\$500) in total for any calendar week. In addition, the total stipulated late penalties shall not exceed Ten Thousand Dollars (\$10,000). However, any other provision or term of this Consent Order notwithstanding, the stipulated penalties and limitations thereto found in this Consent Order for violations of paragraphs B., and C., are applicable only to such violations that occur within twenty (20) weeks after this consent order is signed. Violations of paragraphs B., and C., of this Consent Order that occur or continue beyond twenty (20)

weeks after this Consent Order is signed are specifically subject to separate, additional enforcement by the Department, including the possible assessment of penalties for said violations.

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 the 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 alleged in this Order.

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

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

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 an Order 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 upon the issuance of this Consent Order if future Orders, litigation or other enforcement actions 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 Permittee hereby waives any right to a conference prior to the execution of the Consent Order or any right to a hearing before the Environmental Management Commission.

  
GREAT WHITE, LLC

BY: 

ITS: 

DATE: 7 October, 1997

  
JAMES W. WARR, DIRECTOR  
ALABAMA DEPARTMENT  
OF ENVIRONMENTAL  
MANAGEMENT

DATE: 15 Oct 97