

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

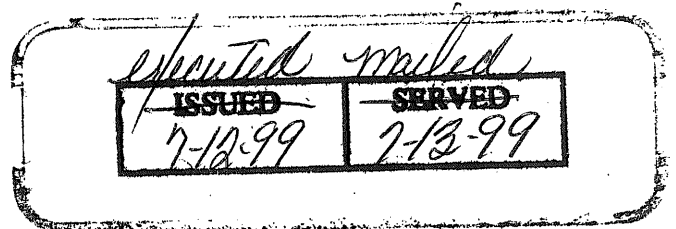
IN THE MATTER OF: )  
 )  
SUMMIT CONSTRUCTION COMPANY, INC. )  
 )  
BALDWIN COUNTY, ALABAMA )

**CONSENT ORDER NO. 99-113-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, the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto and the National Pollutant Discharge Elimination system administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following **FINDINGS**:

1. The Summit Construction Company, Inc. (hereinafter "Summit") is an Alabama Corporation which, acting either as Member, in the case of Summit Development III, L.L.C. and Pennstar, L.L.C., or as a Manager, in the Case of Remington, L.L. C. or as the Responsible party or as a Contractor for a number of Limited Liability Corporations(s), in the case of Lillian Investment, L.L. C., or for separate corporations in the case of Wolf Creek Industries, Inc. at the



Dixie Graves Boulevard property, or acting independently, operates several construction and mining sites in Baldwin County, 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. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the state water pollution control agency for the purposes of the federal Clean Water Act, 33 U.S.C. §§ 1251 through 1387. 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. The Department contends Summit commenced regulated activities at three separate sites now known as the Commons at Magnolia Springs Phase I, Meadow View Subdivision and a mining site on Annie Cooper Lane, prior to receiving or obtaining a valid permit in violation of the Alabama Water Pollution Control Act ("the Act"). Subsequently Summit received a permit to discharge pollutants to waters of the State from two of the Sites and has applied for a permit for the third Site. Further, the Department contends that Summit has failed to properly terminate or renew coverage at Quail Meadows (ALR102547) and Dixie Graves Blvd. (ALR102498).

5. The Department issued to Summit NPDES Permit Number AL067491 for the operation of a mining site located in T7S, R4E, Sec. 35, subject to certain terms, conditions and limitations. The Department alleges Summit violated said Permit by, among other things, failing to submit reports required by said Permit.

6. The Department issued to Summit authorization ALR103404 under General NPDES Permit Number 610000 for discharges resulting from stormwater runoff from construction

activities conducted by Summit as manager of Summit Development III, L.L.C. at Quail Valley Phase III. The Department alleges Summit violated said Permit by, among other things, failing to maintain adequate Best Management practices ("BMPs") and failing to properly display facility identification required by said Permit and repeated said alleged violations after warning.

7. The Department issued to Summit authorization number ALR104319 under General NPDES Permit Number 610000 for discharges resulting from stormwater runoff from construction activities conducted by Summit as Manager of Remington, L.L.C., at the Commons of Magnolia Springs Phase I. The Department alleges Summit violated said Permit by, among other things, failing to maintain adequate BMPs and failing to properly display facility identification as required by the Permit. Further, the Department alleges that Summit failed to respond timely to a warning regarding the aforementioned violations.

8. The Department contends that Summit, as Manager of Remington, L.L. C., included inadvertent errors or inaccurate information on an application submitted for a NPDES permit dated February 18, 1999 and received by the Department on February 23, 1999.

9. Summit neither admits nor denies the allegations herein, but in a continuing effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Summit has agreed to the terms of this Consent Order.

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

### **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), and 22-22-9(I), the Department **ORDERS** and Summit **AGREES:**

- A. That within thirty days from the effective date of Order, Summit shall pay to the Department a civil penalty in the amount of \$25,000 for the violations cited herein.
- B. That Summit shall immediately upon the effective date of this Order and hereafter comply with all requirements of all of the Permits, including, but not limited to, the requirements that Summit implement measures necessary to prevent the discharge of sediment from all sites and their associated areas, and the requirements that Summit maintain adequate BMPs and properly display facility identification at each site.
- C. That within thirty days from the effective date of this Order, Summit shall submit to the Department a report identifying any and all sites where Summit is an owner, a Member, Manager of L.L.C., or as a contractor to a L.L.C., engaged in regulated activities requiring a NPDES Permit. Further, Summit shall submit within the same thirty days the appropriate NPDES permit applications for any and all sites identified.
- D. That Summit shall immediately pay, upon notification by the Department, a stipulated penalty of \$25,000 per site for each existing or future site not identified in paragraph C above, at which the Department determines that NPDES regulated activities of Summit are occurring without a valid Permit.
- E. That Summit shall submit within 5 days of the effective date of this Order an updated NPDES Permit application form or amendment for The Commons at Magnolia Springs

Phase I correcting any inaccurate information or inadvertent error previously submitted.

- F. 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 that are alleged in this Order.
- G. That Summit is not relieved from any liability if it fails to comply with any provision of this Consent Order.
- H. That, for purposes of this Order only, Summit 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. Summit also agrees that in any action brought by the Department to compel compliance with the terms of this agreement, Summit shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility.
- I. 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 Summit which would constitute possible violations not addressed in this Order, then such 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 Summit shall not object to such future orders, litigation or enforcement action based on the issuance of this Order if further Orders, litigation or other enforcement action address matters not raised in this Order.

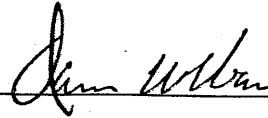
J. That, by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the parties do hereby waive any hearing on the terms and conditions of same.

SUMMIT CONSTRUCTION COMPANY  
INCORPORATED

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: \_\_\_\_\_

By: \_\_\_\_\_



DATE: 7-6-99

DATE: 12 July 99