ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF	)	
J & J, LLC STRATFORD SUBDIVISION OZARK, T6N, R24E, S33, DALE COUNTY, ALABAMA NPDES REGISTRATION NO. ALR16EC27	)	ORDER 10-XXX-WP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and J & J, LLC (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 an Alabama developer constructing the residential subdivision development Stratford (hereinafter "Facility") located in T6N, R24E, S33 off Highway 231 South just behind the Wal-Mart, in Ozark, Dale County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary to the Choctawhatchee River, a water of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. 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

Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22A-16 (2006 Rplc. Vol.).

4. The following references and acronyms are used in this 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
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

5. ADEM Admin. Code r. 335-6-12-.21(1) states "that [c]ommencement and/or continuation of NPDES construction activity is prohibited after March 1, 2003, or the effective date of this Chapter, whichever date occurs later, unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements of this Chapter and applicable requirements of ADEM Administrative Code Division 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").

6. The Department inspected the Facility on July 16, 2009 and documented that the Operator had not properly implemented and maintained effective BMPs, resulting in potential discharges of sediment and other pollutants in stormwater runoff to a UT to Choctawhatchee River, which is a violation of ADEM Admin. Code r. 335-6-12-.21(1).

7. On August 17, 2009 a NOV was sent to the Operator by the Department as a result of the July 16, 2009 inspection. The NOV notified the Operator of violations documented at the Facility, and required the Operator to submit to the Department a report prepared by a QCP showing steps that were taken at the Facility to correct the noted violations within thirty

days of receipt of the NOV. The required report has not been received by the Department. The report was due to the Department on October 1, 2009.

8. Ala. Code § 22-22-9(e) (2006 Rplc. Vol.) requires an operator to respond within the specified time frame to a notice of violation or non-compliance by the Department. The Operator violated Ala. Code § 22-22-9(e) (2006 Rplc. Vol) by failing to respond to the NOV.

9. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

11. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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 be less than $100.00 or 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: The Department noted two violations of ADEM Admin. Code chap. 335-6 and the AWPCA. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, 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 $8,000.00.

B. THE STANDARD OF CARE: In consideration of this factor the Department observed that the Operator failed to respond to the Department's August 17, 2009 NOV within the designated timeframe.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator avoided certain costs associated with proper implementation and maintenance of BMPs, inspections, and recordkeeping, however, the magnitude of these cost savings and resulting economic benefit, if any, is unknown.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: In consideration of the Operator's history of previous violations, the Department enhanced the penalty by an additional $2,500.00.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: This Special Order by Consent 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 desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

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. (2006 Rplc. Vol.), 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 $8,000.00, payable in nine monthly installments. The first eight installments shall be in the amount of $888.00 and the final installment shall be in the amount of $896.00. The first payment shall be due on the first of the month following the effective date of this Order, with each subsequent payment due on the first of each month thereafter.

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 to take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. The Operator agrees that, within five days of the effective date of this Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. The Operator agrees that, within ten days of the effective date of this Order, the Operator shall submit to the Department a CBMPP, prepared/certified by a QCP, detailing effective BMPs that meet or exceed the technical standards outlined in ADEM Admin. Code chap. 335-6-12 and the Alabama Handbook.

F. The Operator agrees that, within thirty days of the effective date of this Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM

Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

G. The Operator agrees that, within seven days of the completion of the activities required in F above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the AL Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12 have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin Code chap. 335-6-12 has been achieved at the Facility, offsite conveyances, and affected State waters.

H. The Operator agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A,C,D,E, F and G contained herein or any other requirement date, except for *Force Majure* acts as hereinafter defined, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	$100
31st to 60th day	$200
After 60 days	$300

If the Operator fails to meet any milestone or any assigned date for a period of ninety days after any required date described in paragraphs A,C,D,E,F and G then the Department reserves the right to file a new action against the Operator.

I. The Department and the Operator (hereinafter collectively " the Parties") agree that the cumulative stipulated penalties described in Paragraph H above shall under no circumstances exceed $12,000.00. Once stipulated penalties of $12,000.00 are due to the Department and violation(s) continue to occur, then the Department shall be free to issue additional orders or to file suit against the Operator in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

J. The Operator agrees to submit payment of stipulated penalties, as described in Paragraph H, to the Department so that they are received by the Department no later than thirty days following the completion of the milestone or requirement. Notification to the Operator by the Department of the assessment of any stipulated penalty is not required.

K. The 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.

L. 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.

M. 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.

N. 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.

O. The Department and the Operator 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.

P. The Department and the Operator 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.

Q. The Department and the Operator agree that this Consent Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

R. The Department and the Operator 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.

S. The Department and the Operator 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.

T. The Department and the Operator agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

U. The Department and the Operator 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.

J & J, LLC

(Signature of Authorized Representative)

Jody Britton
(Print Name of Authorized Representative)

OWNER
Title

Date Signed: 3/5/10

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

John P. Hagood
Director

Date Signed: _____

Attachment 1

Penalty Calculation Worksheet

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to Implement and Maintain BMPs	1	$5,000.00		$2500.00
Failure to Respond to NOV	1	$3,000.00	$1,500.00	
Totals:	**2**	**$8,000**	**$1,500**	**$2,500.00**

Economic Benefit:	Unknown
Mitigating Factors:	None Observed
Ability to Pay:	None
Other Factors:	($4,000.00)
Civil Penalty:	**$8,000.00**

Footnotes

* See the "Findings" of the order a detailed description of each violation and the penalty factors.