ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF	)	
NEWELL ROADBUILDERS, INC. PARK PLACE TROY, PIKE COUNTY, ALABAMA NPDES ALR10B399	)	CONSENT ORDER ??-???-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Newell Roadbuilders, 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. and 2014 Cum. Supp.), the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol. and 2014 Cum. Supp.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (2006).

STIPULATIONS

1. The Operator is an Alabama corporation that is registered with the Alabama Secretary of State's Office as a construction business. The Operator is constructing a commercial development Park Place (hereinafter "Facility") located in T9N, R21E, S4, at the intersection of South Dozier Trailer Park and US Hwy 231 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
GP	ADEM NPDES General Permit ALR100000
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional

3. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Walters Branch, a water 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. and 2014 Cum. Supp.).

5. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol. and 2014 Cum. Supp.), 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 (2006). In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol. and 2014 Cum. Supp.).

6. Pursuant to ADEM Admin. Code rs. 335-6-6-.03 and 335-6-6-.23(15), the Operator is required to submit to the Department an NOI and obtain NPDES permit coverage prior to commencing and/or continuing regulated disturbance activities.

7. Pursuant to ADEM Admin. Code rs. 335-6-6-.03 and 335-6-6-.23(15), the Operator is required to submit to the Department an NOI and to obtain NPDES permit coverage or modify existing permit coverage prior to commencing regulated disturbance activities outside of the permitted area.

8. On October 9, 2015, the Operator submitted to the Department an NOI requesting NPDES permit coverage under the GP for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted authorization ALR10B399 to the Operator on October 26, 2015. On November 23, 2015, the Operator submitted a NOI to modify existing permit coverage to add a haul road along the southern perimeter of the site requiring two additional acres of disturbance. The Department granted the permit modification on December 3, 2015. The GP expired on March 31, 2016. The Operator submitted a NOI for reissuance on February 3, 2016. The Department granted the reauthorization ALR10B399 on April 4, 2016. The GP will expire on March 31, 2021.

9. Pursuant to Part III. H. 3. of the GP, the Operator shall promptly take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.

10. Pursuant to Part IV. I of the GP, if for any reason the Operator's discharge does not comply with any limitation or condition of the GP, the Department shall be notified verbally within twenty-four (24) hours of the noncompliant event followed by a written report within five (5) days of the noncompliant event.

11. On January 6, 2016, the QCP notified the Department by email of a noncompliant discharge from the site "over the holidays". On January 10, 2016, the QCP submitted a Noncompliance Notification Report stating that correction of the overloaded perimeter barriers was completed on January 7, 2016, and offsite sediment deposition was in the process of being reclaimed. On January 20, 2016, QCP certification was submitted by the QCP regarding implementation and maintenance of BMPs specifically related to perimeter silt fence sediment barriers, completion of detention pond construction, riser structure was set in place, the detention pond had been seeded/mulched, and offsite sediment had been seeded/mulched in place.

12. Pursuant to Part III. A. of the GP, the Operator shall design, install and maintain effective erosion controls and sediment controls, appropriate for site conditions. Sediment control measures, erosion control measures, and other site management practices must be properly selected based on site-specific conditions, must meet or exceed the technical standards outlined in the Alabama Handbook (defined in Part IV. T. 2. of the GP), and the site-specific CBMPP prepared in accordance with Part III. D. of the GP.

13. Pursuant to Part III. D. of the GP, construction activity may not commence until a CBMPP has been prepared in a format acceptable to the Department and certified by a QCP as adequate to meet the requirements of the GP. The Operator shall properly implement and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.

14. During an inspection of the Facility on January 27, 2016, the Department observed and documented that, although NPDES construction activity had commenced, the Operator had not properly implemented and maintained effective BMPs, in violation of Part III. A. and D. of the GP.

15. In addition, during the January 27, 2016, inspection, accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department, offsite and in Walters Branch, a water of the State, in violation of Part III. H. 3. of the GP.

16. On February 5, 2016, an NOV was sent to the Operator by the Department as a result of the January 27, 2016, 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, a detailed plan for the remediation and/or removal of sediment and other pollutants deposited offsite and/or in State waters, and copies of all inspection reports for the Facility since the commencement of the project, within ten (10) days

of receipt of the NOV. The NOV also required that the Operator to submit to the Department within ten (10) days of receipt of the NOV, certification by a QCP that all deficiencies at the Facility had been corrected.

17. On February 9, 2016, the Operator submitted a response to the NOV. The response included copies of inspection reports for the Facility on November 11, 2015, November 24, 2015, December 21, 2015, January 5, 2016, January 26, 2016, and February 4, 2016, and a certification by a QCP that effective BMPs had been fully implemented/maintained on the site, offsite sediment had been stabilized in place.

18. On January 20, 2016, February 9, 2016, and February 16, 2016, the site QCP submitted certification that effective BMPs for construction and land disturbance at the Facility have been fully implemented/maintained to prevent/minimize sediment and other pollutants in stormwater runoff resulting from a 2-year, 24 hour precipitation event, from leaving the site, entering offsite conveyances, and/or discharging into affected State waters, in accordance with the requirements of ADEM Admin. Code Chap. 335-6-12, ADEM Admin. Code r. 335-6-6-.23, NPDES permit ALR10B399, and the 2014 Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas, September 2014.

19. The Operator submitted rainfall data and advised the Department that the deficiencies and/or violations observed by the Department on January 27, 2016, were the result of unprecedented and continuous rainfall. The Operator submitted information detailing ongoing efforts to ensure compliance to include purchasing additional erosion and sediment control materials/installations and assigning a supervisor dedicated to overseeing erosion and sediment control activities for the operation.

20. 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) (2006 Rplc. Vol. and 2014 Cum. Supp.), 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. Pursuant to Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol. and 2014 Cum. Supp.), 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 seriousness of the violations, their effects, if any on impaired waters, and any available evidence of harm to the environment or threat to the public, the Department determined the base penalty to be $19,500.00.

B. THE STANDARD OF CARE: In considering this factor, the Department noted that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements. The Department noted that the failure to implement effective BMPs resulted in accumulations of sediment resulting from discharges at the Facility, offsite and in Walters Branch, a water of the State. These violations could have been avoided by continual implementation and maintenance of effective BMPs. Therefore, the Department enhanced the penalty by an additional $3,400.00.

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 $1,900.00.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: After receiving the Department's February 5, 2016, NOV, the Operator contends that excessive rainfall had occurred and that the Operator undertook diligent efforts to effectively address the noted violations and to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has not documented previous violations by the Operator.

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 on 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.

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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. and 2014 Cum. Supp.), 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 $17,000.00 in settlement of the violations alleged herein within forty-five (45) days from the date of issuance of this Consent Order. Failure to pay the civil penalty within forty-five days (45) from the date of 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 date of issuance 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 (5) 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 Operator agrees, within five (5) days after the date of issuance of this Consent Order, to have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

H. The Operator agrees, within ten (10) days after the date of issuance of this Consent Order, to submit to the Department a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facility deposited offsite and in State waters.

I. The Operator agrees, within twenty (20) days after the date of issuance of this Consent Order, to fully implement and maintain effective BMPs, implement all plans required by this Consent Order, and correct all deficiencies at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation. The BMPs shall meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and the GP.

J. The Operator agrees, within twenty-five (25) days after the date of issuance of this Consent Order, to submit to the Department a certification with photo-documentation that effective BMPs have been implemented, all deficiencies have been corrected, and full compliance with the requirements of the GP has been achieved at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation.

K. The Operator agrees, unless released in writing by the Department, for 365 days after the date of issuance of this Consent Order, within seven days after each inspection unless extended in writing by the Department, to correct any deficiencies noted during the inspection and to submit to the Department a written report with photo-documentation detailing the results of the inspection, including certification that the Facility is in full compliance with ADEM requirements.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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 the same.

R. 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.

S. 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.

T. 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.

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

V. 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.

NEWELL ROADBUILDERS, INC.

_____
(Signature of Authorized Representative)

Chris Newell
(Print Name of Authorized Representative)

Vice-President
Title

Date Signed: April 20, 2016

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

_____
Lance R. LeFleur, Director

Date Signed: _____

ATTACHMENT 1 - PENALTY SYNOPSIS

Newell Roadbuilders, Inc. - Park Place Troy, Pike ALR10B399

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	1	$4,500	$800	
Discharge/accumulation of sediment offsite	1	$7,500	$1,300	
Water Quality Standard violation	1	$7,500	$1,300	
Totals:	3	$19,500	$3,400	

Economic Benefit*:	$1,900
Sub-Total:	$24,800
Mitigating Factors*:	
Ability to Pay*:	
Other Factors*:	
Amount of Initial Penalty:	$24,800
Total Adjustments:	$7,800
Final Penalty:	$17,000

*See the Department's "Contentions" portion of the Order for a detailed description of each violation and the penalty factors.