

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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ROBERT J. BENTLEY
GOVERNOR

December 5, 2012

CERTIFIED MAIL

JOHN TAMPA
HOPE HULL HOSPITALITY, LLC
715 COLLEGE DRIVE
DALTON, GA 30720

RE: CONSENT ORDER 13-024-CLD
Fairfield Inn & Suites
Montgomery County (101)
NPDES ALR16EGVG
Northwest intersection of Wasden Road and US Hwy 31

Dear Mr. Tampa:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Tessa Antoon, Office of Field Services**, by email at tantoon@adem.state.al.us or by phone at **(334) 394-4312**.

Sincerely,

Steven O. Jenkins, Chief
Field Operations Division

soj/tma File:ECO/40418

Enclosure: Signed Original Consent Order

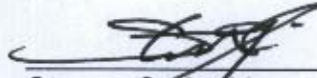


ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order 13-024-CLD upon the person listed below by sending the same, postage paid, through the United States Mail Certified Mail Receipt # 91 7199 9991 7030 3344 2662, with instructions to forward and return receipt, to:

John Tampa
715 College Drive
Dalton, GA 30720

DONE this 5th day of December, 2012.



Steven O. Jenkins

Chief, Field Operations Division
Alabama Department of Environmental Management

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

HOPE HULL HOSPITALITY, LLC)
FAIRFIELD INN & SUITES)
HOPE HULL, MONTGOMERY COUNTY, ALABAMA)
EXPIRED NPDES ALR16EGVG)

CONSENT ORDER 13-024-CLD

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") and Hope Hull Hospitality, 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 limited liability company that has constructed a commercial development, Fairfield Inn & Suites (hereinafter "Facility") located in T15N, R17E, S15, at the northwest intersection of Wasden Road and US Highway 31, in Hope Hull, Montgomery County, Alabama.

2. 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.).

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 22-22-14 (2006 Rplc. Vol.).

ADEM'S CONTENTIONS

4. Sediment and other pollutants in stormwater runoff from the Facility have discharged to Caney Branch, a water of the State.

5. 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.

AO	Administrative Order
BMPs	Best Management Practices
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional

6. On April 11, 2012, the Department issued AO 12-098-WP to the Operator. The AO required the Operator to cease all construction and related activity other than BMP implementation and maintenance until certain actions were taken with regard to alleged violations of applicable environmental laws and regulations, and until authorization to resume regulated activity was received in writing from the Department.

7. On April 20, 2012, ADEM staff sent email communication to the Operator and QCP, containing a copy of the AO, and advised the Operator and QCP of the AO's cease requirement.

8. On April 24, 2012, in a telephone conversation between the Operator's QCP and ADEM staff, the QCP described his plans for runoff control at the site. ADEM staff advised the QCP that BMPs shall meet or exceed the requirements of ADEM Admin. Code chap. 335-6-12, and the Alabama Handbook. ADEM staff also advised the QCP of the AO's cease requirement and compliance deadlines.

9. During an inspection of the Facility on May 15, 2012, the Department documented that NPDES construction activity was continuing and the Operator had not properly implemented and maintained effective BMPs in violation of ADEM Admin. Code rs. 335-6-12-.21(5), 335-6-12-.06(3), 335-6-12-.35(11)(a), and 335-6-12-.35(11)(b) and ADEM AO 12-098-WP.

10. On May 25, 2012, the Operator submitted a request for termination of permit coverage and notified the Department that construction of the Facility was complete and the Facility was open for business.

11. Ala. Code § 22-22-9(e) requires an operator to respond within the specified time frame to a notice of violation or non-compliance by the Department.

12. The Operator violated Ala. Code § 22-22-9(e) by failing to comply with the requirements of the AO within the specified timeframe.

13. 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.

14. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, 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. 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 magnitude and duration of the violations, 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 \$27,500.

B. **THE STANDARD OF CARE:** In considering this factor, the Department noted the violation of operating without a permit was a non-technical requirement and easily avoided. The Department also noted the failure of the Operator to cease construction activity and to comply with ADEM AO 12-098-WP. Thus, the Department enhanced the penalty by an additional \$7,000.

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 \$200.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** After receiving the AO, the Operator contends that it undertook diligent efforts to effectively address the noted violations and to minimize or mitigate the effects of the violations upon the environment. In light of the information submitted to the Department by the Operator, and the fact that the site is complete and stabilized, the Department decreased the penalty by \$17,700.

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 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.

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., as amended, 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, in settlement of the violations alleged herein. The Operator and the Department agree that the administrative penalty assessed herein shall be paid by the Operator to the Department according to the schedule in the table below. The Operator agrees that, in the event the Operator fails to comply with any of the requirements of this Consent Order within the time provided, the remainder of the full assessed civil penalty shall become immediately due and payable.

Payment #	Amount	Due Date
1	\$5,000	12/01/2012
2	\$1,000	1/01/2013
3	\$1,000	2/01/2013
4	\$1,000	3/01/2013
5	\$1,000	4/01/2013
6	\$1,000	5/01/2013
7	\$1,000	6/01/2013
8	\$1,000	7/01/2013
9	\$1,000	8/01/2013

10	\$1,000	9/01/2013
11	\$1,000	10/01/2013
12	\$1,000	11/01/2013
13	\$1,000	12/01/2013
TOTAL	\$17,000	

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 effective date of this Consent Order and continuing thereafter, to ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES permit limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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 same.

J. 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.

K. 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.

L. 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.

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

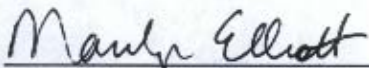
N. The Parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

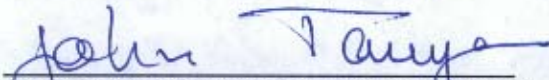
Executed in duplicate with each part being an original.

HOPE HULL HOSPITALITY LLC

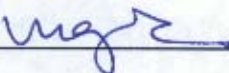
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)


Lance R. LeFleur, Director


(Print Name of Authorized Representative)

Date Signed: 12/5/12


Title

Date Signed: 12-15-12

ATTACHMENT 1 - PENALTY SYNOPSIS

[HOPE HULL HOSPITALITY, LLC - FAIRFIELD INN & SUITES]

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operating an NPDES construction site without, or outside of, NPDES coverage.	1	\$5,000	\$1,300	
Effective Best Management Practices (BMPs) not implemented and/or maintained	3	\$9,000	\$2,300	
Discharge/accumulation of sediment offsite	1	\$5,000	\$1,300	
Failure to comply with Warning Letter	1	\$2,500	\$600	
Failure to respond to and comply with Administrative Stop-Work Order 12-098-WP	1	\$6,000	\$1,500	
Totals:	7	\$27,500	\$7,000	

Economic Benefit*:	\$200
Sub-Total:	\$34,700
Mitigating Factors:	(\$17,700)
Ability to Pay*:	
Other Factors*:	
Final Penalty:	\$17,000

*Refer to the "Contentions" of the Order for a description of each penalty factor.