

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

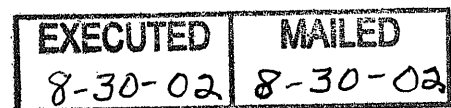
FIELDSTONE CONSTRUCTION
& MORTGAGE, INC.
CALDWELL CROSSINGS
BIRMINGHAM, SHELBY COUNTY
ALABAMA

CONSENT ORDER NO. 02-230-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, and 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 (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") 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 Alabama Department of Environmental Management makes the following FINDINGS:

1. Fieldstone Construction & Mortgage, Inc. ("Permittee") is a responsible party for the Caldwell Crossings facility located in Shelby County, Alabama. The Caldwell Crossings site is located at T19S, R2W, S3.



2. The Department 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 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 through 1387, as amended. 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. On January 31, 2001, the Department issued authorization to Fieldstone Construction & Mortgage, Inc. to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR105800. The NPDES permit regulates the Permittee's discharges into an unnamed tributary of the Cahaba River and imposes limitations and monitoring requirements.

5. Part II, B., 2., a. and b., of NPDES General Permit No. ALG610000 requires the Permittee to prepare and implement BMPs to prevent/minimize the discharge of all sources of pollution (i.e. sediment, trash, garbage, debris, oil & grease, chemicals, materials, etc.) to State waters in storm water runoff. During inspections conducted at Caldwell Crossings by Department representatives on May 8, 2001; July 31, 2001; October 30, 2001; and December 14, 2001; the Permittee was found to be in violation of Part II, B., 2., a. and b., of NPDES General Permit No. ALG610000. Specifically, it was observed during the inspections that several acres of disturbed ground were without adequate erosion and/or sediment control structures. Sediments were observed in paved streets and drainage ditches off-site and down-gradient from the site. This site was issued Warning Letters on May 9,

2001; July 31, 2001, and December 17, 2001; a Notice of Violation was issued on November 1, 2001.

6. Part 1, A, 3 of General Permit No. ALG61000, and ADEM Admin Code R 335-6-10-.09(4)9, provides that discharges or activities which for any reason cause instream turbidity to exceed background or upstream turbidity by more than 50 ntu after reasonable opportunity for mixing has been afforded are violations and may result in an enforcement action against the Permittee.

During a sampling inspection at Caldwell Crossings conducted by Department personnel on May 3, 2002, water samples were collected at the outfall of the sediment basin under construction on Phase II of Caldwell Crossings. The upstream sample was 38 ntu turbidity and 31 mg/L Total Suspended Solids. The downstream sample, allowing for adequate mixing, had a turbidity level of 420 ntu and Total Suspended Solids level of 288 mg/L. The ADEM NPDES General Permit ALG610000 allows a variance of 50 ntu's from upstream to downstream, the variance at Caldwell Crossings was 382 ntu's, in violation of Part 1, A, 3 of General Permit No. ALG61000, and ADEM Admin Code R 335-6-10-.09(4)9.

7. The stilling basin constructed at Phase I of Caldwell Crossings is designed to collect the flow of the unnamed tributary to the Cahaba River that flows through the subdivision and pass it through a series of silt fences and hay bales. This is intended to slow the water and precipitate out the sediment preventing the sediment from the site from impacting the tributary and subsequently the Cahaba River. The water enters the system through a culvert on the southern side of the subdivision, passes through the subdivision and encounters a series of check dams. These check dams are in place to divert the water into the stilling basin during a rain event. Two surveys of the stilling basin were conducted after a

significant rainfall had occurred. The amount of water entering the stilling basin did not appear to be the majority of the run-off from the site; therefore much of the discharge from the subdivision did not receive treatment from the stilling basin. Silt fences and hay bales are effective for sheet flows, the water that was flowing through the basin appeared channelized rendering the silt fences inefficient. If the majority of the water does pass through the basin and floods the area the basin would be more effective as a sediment trap.

The Department will allow the stilling basin to be retained at Phase I site, and the Phase I site only. The Department will accept Fieldstone Construction & Mortgage, Inc.'s assurance that it will not develop future projects utilizing the stilling basin design unless and until the Department gives its prior approval.

8. In a further effort to assure that sediments are retained on the site and are not discharged, Fieldstone Construction & Mortgage, Inc. has constructed two (2) additional sediment retention ponds located in Phase II area upstream of the sediment pond described in the Best Management Practices Plan associated with Phase II.

9. Fieldstone Construction & Mortgage, Inc. does not agree with all of the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Fieldstone Construction & Mortgage, Inc. has consented 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 cited in this Consent 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 on 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), , as amended, and with the consent of Fieldstone Construction & Mortgage, Inc., it is hereby ORDERED:

A. That, not later than thirty (30) calendar days after the date of execution of this Consent Order, Fieldstone Construction & Mortgage, Inc. shall pay to the Department a civil penalty in the amount of Ten Thousand Dollars (\$10,000) for the violations cited herein.

B. That, immediately upon the date of execution of this Consent Order, Fieldstone Construction & Mortgage, Inc. shall fully implement and regularly maintain temporary BMPs adequate to prevent sediment in storm water from leaving the site. Said BMPs shall also be adequate to eliminate the discharge of sediment and other pollutants in stormwater runoff discharging into waters of the State of Alabama. Further, these BMPs shall conform to the EPA document entitled *Storm Water Management for Construction Activities* and shall contain other measures as necessary to eliminate the discharge of pollutants from this project.

C. 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

D. 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. 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. That Fieldstone Construction & Mortgage, Inc. is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. That, for purposes of this Consent Order only, Fieldstone Construction & Mortgage, Inc. 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. Fieldstone Construction & Mortgage, Inc. also agrees that in any action brought by the Department to compel compliance with the terms of this Consent Order, Fieldstone Construction & Mortgage, Inc. 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 Fieldstone Construction & Mortgage, Inc. including its 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 be beyond the reasonable control of Fieldstone Construction & Mortgage, Inc.) and which delays or prevents performances by a

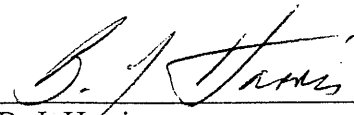
date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*.


H. 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 Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Fieldstone Construction & Mortgage, Inc. 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. 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 Fieldstone Construction & Mortgage, Inc. does hereby waive any hearing on the terms and conditions of same.

FIELDSTONE CONSTRUCTION
& MORTGAGE, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


B. J. Harris
President


James W. Warr
Director

Date Signed: 8/20/02

Date Signed: 8/30/02