

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

August 13, 2012

CERTIFIED MAIL

MASON HEAD
HEADWATERS LLC
12351 HIGHWAY 188
GRAND BAY AL 36541

RE: Administrative Order No 12-148-WP
Facility ID 41096
Mobile County (097)
Headwaters Subdivision Dam

Dear Mr. Head:

Please find enclosed an Administrative Order which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. The Unilateral Order has been issued without the consent of the responsible parties. This order does not assess a civil penalty.

Pursuant to §§22-22A-(7)(c)1, Code of Alabama (1975), as amended, this Order may be appealed by filing a request for a hearing within 30 days after receiving notice of this Order. The request should be addressed to the Chair of the Environmental Management Commission and must comply with the requirements of ADEM Admin. Code r. 335-2-1-.04. Copies of the requirements may be obtained by submitting a written request to the attention of Molly Tatum, ADEM-Permits and Services Division. Rule 335-2-1-.04 is also available online at the Department's website at <http://www.adem.state.al.us/alEnviroRegLaws/files/Div2Eff5-26-09.pdf>.

If you have questions regarding this matter, please contact **Tim Connole, Mobile Branch**, by email at TNC@adem.state.al.us or by phone at (251) 432-6533.

Sincerely,

Steven O. Jenkins, Chief
Field Operations Division

SOJ/tnc File:EA0/XXX

Enclosure

cc: Thomas L. Johnston, ADEM
Valerie Jackson, ADEM
Scott Hughes, ADEM
Mobile Branch, ADEM

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

HEADWATERS LLC
HEADWATERS SUBDIVISION
MOBILE, T5S, R3W, S11,
MOBILE COUNTY, ALABAMA
FACILITY ID 41096

ORDER 12-148-WP

FINDINGS

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.), the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management [hereinafter "Department"] makes the following FINDINGS:

1. Headwaters, LLC (hereinafter "Operator") is an Alabama developer constructing the Headwaters Subdivision (hereinafter "Facility") located in T5S, R3W, S11, off of Dawes Lake Road, in Mobile, Mobile County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to wetlands and an unnamed tributary of Halls Mill Creek, a water of the State.

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.).

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
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional

5. Pursuant to Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.), "[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution."

6. Under ADEM Admin. Code r. 335-6-12-.05(6), the operator retains full responsibility for the design, construction, operation and maintenance of BMPs to protect water quality to the maximum extent practicable. ADEM Admin. Code r. 335-6-12-.35(10) requires operators to promptly take all reasonable steps to determine the nature and impact of non-complying discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

7. The Department inspected the Facility on June 12, 2012, and documented that the dam located within the Facility failed resulting in discharges of sediment and other pollutants in stormwater runoff to wetlands and an unnamed tributary of Hall Mill Creek, in violation of Ala. Code § 22-22-9(i)(3) and ADEM Admin. Code r. 335-6-12.35(10).

8. 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.

9. On June 26, 2012, a NOV was sent to the Operator by the Department as a result of the June 12, 2012, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department, within 10 days of receipt of the NOV, a report prepared by a QCP showing steps that were taken at the Facility to correct the noted violations. The Department received the required report on July 16, 2012.

10. The Department evaluated the Facility on July 20, 2012 for compliance and documented the Operator had not removed, to the maximum extent practical, pollutants

deposited offsite and in waters of the State in violation of ADEM Admin. Code r. 335-6-12.35(10).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. The Operator shall 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.

B. The Operator shall have, within thirty days of receipt of this Order, a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

C. The Operator shall, by December 31, 2012, remove/remediate, to the maximum extent practicable, all sediment and other pollutants deposited offsite, in any waterbody, or stormwater conveyance structure.

D. The Operator shall, by December 31, 2012, submit to the Department a certification signed by the QCP that all deficiencies have been corrected, all offsite sediment / pollutants have been removed / remediated, 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.

E. This Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

F. That, should any provision of this 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.

G. That, except as otherwise set forth herein, this 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.

H. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

I. That failure to comply with the provisions of this Administrative Order within sixty days from receipt of this Order by the Operator, shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 15th day of August, 2012.



Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Stephen O. Jenkins, do hereby certify that I have served the executed Administrative Order Number 12-148-WP upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt #91 7108 2133 3936 5742 2626, with instructions to forward and return receipt, to:

**Mason Head
Headwaters, LLC
12351 Hwy 188
Grand Bay, Alabama 356541**

Done this 13th day of August, 2012.

A handwritten signature in black ink, appearing to be 'S. Jenkins', written over a horizontal line.

Stephen O. Jenkins, Chief
Field Operations Division
Alabama Dept. of Environmental Management