

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

April 17, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CHARLES G. KESSLER
PUMPHOUSE, LLC
3505 BENT RIVER ROAD
BIRMINGHAM AL 35239

RE: Administrative Order 13-088-LD
NPDES No. ALR169147
Jefferson County (073)
Pumphouse Village

Dear Mr. Kessler:

Please find enclosed an Administrative Order which requires you to immediately **stop work** on all construction, building, land disturbance and related activity, except as need to address the 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 which 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 Rob Carrington by email at rcarrington@adem.state.al.us or by phone at 205-942-6168.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

SOJ/deh

File: EUO/29575

Enclosure

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

PUMPHOUSE, LLC
PUMPHOUSE VILLAGE
VESTAVIA HILLS, T18S, R2W, S23
JEFFERSON COUNTY, ALABAMA
NPDES REGISTRATION NO. ALR169147

ORDER 13-088-LD

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 r.") 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. Pumphouse, LLC (hereinafter "Operator") is constructing the residential subdivision, Pumphouse Village (hereinafter "Facility") located off of Cahaba Heights Road, in the City of Birmingham, Jefferson 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 Cahaba 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 AWPCA, 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
CBMPP	Construction Best Management Practices Plan
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NTUs	Nephelometric Turbidity Units
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

5. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On December 16, 2010, the Operator submitted to the Department an NOR requesting NPDES coverage under ADEM Admin. Code chap. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration ALR169147 to the Operator on April 11, 2011. Registration ALR169147 expired on April 10, 2012.

7. During inspections of the Facility on September 24, 2012, and February 11, 2013, the Department documented that the Operator had not re-registered for and obtained NPDES coverage and that regulated disturbance activities and/or discharges were continuing, in violation of ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1).

8. ADEM Admin. Code r. 335-6-12-.21(1) provides that commencement and/or continuation of NPDES construction activity is prohibited unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as adequate to meet the requirements ADEM Admin Code chap. 335-6-12 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").

9. During the inspections of the Facility on September 24, 2012, and February 11, 2013, the Department documented that the Operator had not properly implemented and maintained effective BMPs, although NPDES construction activity was continuing, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

10. 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.

11. During the September 24, 2012, and February 11, 2013, inspections, accumulations of sediment resulting from discharges at the Facility were observed by the Department offsite and in an UT to the Cahaba River, in violation of ADEM Admin. Code r. 335-6-12-.35(10).

12. On October 17, 2012, an NOV was sent to the Operator by the Department as a result of the September 24, 2012 inspection. The NOV notified the Operator of deficiencies documented at the Facility, and required the Operator to submit to the Department, within thirty 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 Operator failed to submit the required report to the Department.

13. On October 25, 2012, the Department received a response from the Operator's consultant certifying that the deficiencies noted in the October 17, 2012 NOV had been addressed.

14. Pursuant to ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters, nor shall turbidity exceed 50 NTUs above background.

15. During the inspection of the Facility on February 11, 2013, the Department analyzed water samples collected from an UT to the Cahaba River that indicated a background turbidity of 42.8 NTUs and a turbidity of 146 NTUs downstream from the Facility discharge,

resulting in an increase of 103.2 NTUs, in violation of ADEM Admin. Code r. 335-6-10-.09(5)(e)(9).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That the Operator shall **IMMEDIATELY CEASE** all construction, building, production, and related activity at the Facility other than BMP implementation / maintenance, and sediment removal / remediation. Construction and related activity other than BMP implementation / maintenance, and sediment removal / remediation is not authorized to resume until approved in writing by the Department.

B. That 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.

C. That, within five days of issuance of this Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

D. That, within ten days of the issuance of this Order, the Operator shall submit to the Department the results of the QCP comprehensive inspection and a plan to return the Facility, offsite conveyances, and affected State waters to compliance with ADEM Admin. Code chap. 335-6-12.

E. That, within thirty days of issuance 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.

F. That, within seven days of the completion of the activities in E 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 Alabama 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.

G. That this Order does not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

H. 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.

I. 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.

J. 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.

K. That failure to comply with the provisions of this Administrative Order 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 17th day of April, 2013.

Nancy Elliott

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, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order Number 13-088-LD upon the person listed below by sending the same, postage paid, through the United States Mail, Certified Mail Receipt #91 7199 9991 7030 3431 2360, with instructions to forward and return receipt, to:

**Charles G. Kessler
Pumphouse, LLC
3505 Bent River Road
Birmingham AL 35239**

Done this 17th day of April, 2013.



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

From: [Houston, Derick](#)
To: [Jackson, Valerie](#)
Cc: [Rogers, Paul](#)
Subject: Certified Mail - Charles Kessler -Pumphouse LLC Order 13-088-LD
Date: Wednesday, May 01, 2013 12:37:47 PM

Valerie,

As we discussed on the phone, below is an email from Pumphouse, LLC. They stated that they received the finalized order on April 18, 2013. Please let me know if you have any questions. Thanks.

[Derick Houston, Chief](#)
[Facility Unit](#)
[Birmingham Branch](#)
[\(205\) 942-6168](#)

From: jbrichardson [mailto:jbrichardson@bellsouth.net]
Sent: Wednesday, May 01, 2013 9:15 AM
To: Carrington, Robert
Subject: certified mail - Charles Kessler -Pumphouse LLC-(205) 985-7171

Your certified mail dated April 17, 2013 was received by this office on April 18, 2013.
If you need further information you can reach Mr. Kessler at the above telephone number.

Thanks.