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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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JAMES W. WARR

DIRECTOR (ACTING)

BOB RILEY

GOVERNOR

December 15, 2004

CERTIFIED MAIL

7003 0500 0001 2713 2982

JIM HEAD

J B HEAD CONSTRUCTION COMPANY

425 BINGHAM AVENUE

OZARK AL 36360

Facsimiles: (334)

Administration: 271-7950

General Counsel: 394-4332

Air: 279-3044

Land: 279-3050

Water: 279-3051

Groundwater: 270-5631

Field Operations: 272-8131

Laboratory: 277-6718

Mining: 394-4326

Education/Outreach: 394-4383

RE: CONSENT ORDER 05-022-CMNPS

Old Mexico Restaurant Houston County Unregistered Site
Hwy 231 South in Dothan, AL

Dear Mr. Head:

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 **Kelly Yates, Construction Unit**, by email at **kay@adem.state.al.us** or by phone at **(334) 394-4312**.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven O. Jenkins".

Steven O. Jenkins, Chief
Field Operations Division

SOJ/kay

E-copy: Water Management Division, EPA Region IV Office of Public Affairs, ADEM

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

_____)	
IN THE MATTER OF)	
)	
J B HEAD CONSTRUCTION COMPANY INC)	CONSENT ORDER 05-022-CMNPS
OLD MEXICO RESTAURANT)	
TOWNSHIP 3N, RANGE 26E, SECTION 10)	
HOUSTON COUNTY, ALABAMA)	
UNREGISTERED SITE)	
_____)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act (AEMA), Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act (AWPCA), Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (ADEM Admin. Code R.) promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (NPDES) administered by the Alabama Department of Environmental Management (Department" or "ADEM") and approved by the Administrator of the U.S. Environmental Protection Agency ("EPA") pursuant to the Federal Water Pollution Control Act (FWPCA) §402, 33 U.S.C. § 1342, as amended, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. J.B. Head Construction Company, Inc., (hereinafter "Operator") is an Alabama corporation constructing the Old Mexico Restaurant (hereinafter "Facility") a commercial

development located in Dothan, Alabama (Township 3 North, Range 26 East, Section 10). If the Operator's construction activities are not properly managed, sediment and other pollutants in untreated stormwater runoff can be discharged into Rock Creek, a water of the State, classified for Fish and Wildlife.

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 FWPCA. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. As of March 1, 2003, pursuant to ADEM Admin. Code Chapter 335-6-12 regarding discharges of stormwater, the Operator is required to submit a complete and correct NPDES registration, including the appropriate fee, prior to conducting any construction or land disturbance that equals or exceeds one (1) acre, or if less than one (1) acre in size and is part of, adjacent to, or associated with a common plan for development or sale which might eventually equal or exceed one (1) acre in size.

5. The Operator had not submitted a Notice of Registration (NOR) for the Facility requesting coverage under ADEM Admin. Code Chapter 335-6-12, as of July 23, 2004.

6. On July 17, 2003, an inspection of the Facility by the Department revealed ongoing untreated discharges in stormwater runoff to Rock Creek, a water of the State. It was noted that some Best Management Practices (BMPs) had been implemented at

the site but were not adequate to control stormwater runoff. ADEM Admin. Code Chapter 335-6-12-.05 requires implementation and regular maintenance of effective BMPs to the maximum extent practicable to prevent/minimize sediment and other pollutants in stormwater runoff from leaving the site.

7. A Notice of Violation (NOV) was issued to the Operator, on September 8, 2003, as result of the inspection. The NOV requested that a complete and correct NOR, a Construction Best Management Practices Plan (CBMPP), and a detailed compliance schedule to be submitted to the Department by September 18, 2003. Certification by a qualified credentialed professional (QCP) that BMPs were implemented and maintained at the site, was required to be submitted on September 23, 2003. This deadline was extended until October 3, 2003, after receipt of a written request from the Operator on September 16, 2003. As of July 28, 2004, the requested information has not been received by the Department.

8. A conference call was scheduled with the Operator on September 15, 2003. During the conference call, Department personnel discussed with the Operator deficiencies observed at the Facility, the steps that the Operator needed to take to ensure compliance, and reiterated the requirement for the Operator to register and respond to the September 8, 2003, NOV.

9. On December 4, 2003, an inspection of the Facility by the Department revealed ongoing untreated discharges in stormwater runoff to Rock Creek, a water of the State. It was noted that some BMPs had been implemented at the site but were not adequate to control stormwater runoff. As a result of the inspection a NOV was

sent to the Operator on December 31, 2003. As of July 23, 2004, a response to the December 31, 2003, NOV has not been received.

10. The Operator neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AWPCA, the Operator has consented to the terms of this Consent Order.

11. 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 the Operator, it is hereby ORDERED:

A. That, not later than forty-five (45) days after the execution date of this Consent Order, the Operator shall pay to the Department a civil penalty in the amount of Two-Thousand Five Hundred Dollars (\$2,500) for the violations cited herein. In determining the amount of the penalty set forth herein, the Department considered the statutorily prescribed factors set forth at Code of Alabama (1975), § 22-22A-5(18)(c), as amended.

B. That all penalties due pursuant to this 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

C. That the Operator shall, immediately upon the date of execution of this Consent Order and continuing thereafter, ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES registration limitations, terms, and conditions for all sites/facilities under the control of the Operator, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Order.

D. All inspections/evaluations shall be performed by a Professional Engineer (PE) licensed to practice in the State of Alabama, a Department recognized Qualified Credentialed Professional (QCP), a qualified person under the direct supervision of a PE/QCP, or by a Qualified Credentialed Inspector (QCI). All applications, plans, and information shall be certified by a PE/QCP. All submittals to the Department shall comply with applicable ADEM rules and shall be signed by the Operator and certified by a PE/QCP. All plans and submittals shall indicate who conducted the inspection/work, his or her PE/QCP/QCI designation, how the inspection/work was conducted, and shall contain the results of the inspection/work. Within seven (7) days of the receipt of any written comments from the Department, the Operator shall modify any application, plan, or information consistent with any comments made by the Department in writing. Within seven (7) days of receipt of any written requests for additional information or

clarification from the Department, the Operator shall submit the requested additional information or clarification to the Department in writing.

E. That, within seven (7) days of the effective date of this Consent Order, the Operator shall submit a complete and correct NOR for the Facility and any other unregistered or unreclaimed construction sites required to be registered pursuant to ADEM Admin. Code Chapter 335-6-12.

F. That, immediately upon the effective date of this Consent Order, the Operator shall fully implement and regularly maintain temporary BMPs to control and to prevent sediment and other pollutants in untreated stormwater from leaving the Facility.

G. That, within seven (7) days after the effective date of this Consent Order, the Operator shall have performed a comprehensive inspection of the Facility and receiving waters and shall submit to the Department the results of this comprehensive inspection.

H. That, within ten (10) days after the effective date of this Consent Order, the Operator shall submit a detailed plan for the remediation and/or removal of sediment and other pollutants from the Facility deposited offsite and in Rock Creek, a water of the State.

I. That, not later than twenty (20) days after the execution date of this Consent Order, the Operator shall have performed a comprehensive evaluation and submitted the results to the Department of all other (1) active construction, mining, or materials management sites/facilities, (2) non-reclaimed sites/facilities, (3) sites/facilities

requiring registration that have not registered for NPDES coverage, and (4) NPDES registered/authorized sites/facilities.

J. That, within twenty-five (25) days of the effective date of this Consent Order, the Operator shall submit a certification that all deficiencies at the Facility, other sites, and affected State waters, have been corrected and full compliance with the requirements of ADEM Admin. Code Chapter 335-6-12 has been achieved.

K. 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.

L. 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.

M. That the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

N. That, 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 a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court, or any other court of competent jurisdiction. 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 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 the Operator) 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*. 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 (10) 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 specific circumstances.

O. 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 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.

P. 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 the Operator does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

J.B. HEAD CONSTRUCTION COMPANY INC

J.B. Head
(Signature of Authorized Representative)

J. B. HEAD
(Print Name of Authorized Representative)

President
Title

Date Signed: 9/21/04

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

James W. Warr
James W. Warr (Acting)
Director

Date Signed: 8 Dec 2004

