

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

TUSCALOOSA COUNTY COMMISSION

RaCON, Inc.

TUSCALOOSA, ALABAMA

ALG610000

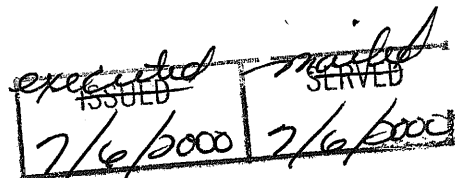
ALR100991

CONSENT ORDER NO. 00-148-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to -16, Code of Alabama 1975, as amended, the Alabama Water Pollution Control Act, §§ 22-22-1 to -14, Code of Alabama 1975, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System 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 § 402 of the Federal Water Pollution Control Act, 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 Department makes the following FINDINGS:

1. The Tuscaloosa County Commission, is the permittee for the Mitt-Larry Road extension/Western Bypass, located at T20S, R11W, S 36, 25, 24; T20S, R10W, S 19, 20, 17; T21S, R11W, S 1, 12, 13, 24; and T21S, R10W, S 19, 30 in Tuscaloosa County, Alabama. Farrington B. Snipes, Jr. is the Director of the Department of Planning & Community Development and responsible party for the site. RaCON, Inc. is the operator for the Mitt-Larry Road extension/Western Bypass site. Ramona Andrews is the president of RaCON, Inc.



2. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to §§ 22-22-A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. On July 15, 1997, the Department issued authorization to the Tuscaloosa County Commission to operate under the NPDES program identified as NPDES General Permit No. ALG610000. The authorization number is ALR100991. The NPDES permit regulates the Tuscaloosa County Commission's discharges into the following: Tater Hill Creek, Mill Creek, and Big Creek Watershed and imposes limitations and monitoring requirements.

4. ADEM Admin. Code R. 335-6-6-.18(2) states that any person required to have a NPDES Permit pursuant to this Chapter and who discharges pollutants without said permit, who violates the conditions of said permit, who discharges pollutants in a manner not authorized by the permit are subject to enforcement by the Department.

5. Part II,C.,1., of NPDES General Permit ALG610000 requires the permittee to promptly take all reasonable steps to mitigate and minimize or prevent any adverse impact on human health or the environment, including the responsible removal or remediation of sediment, debris, or other pollutants deposited in or allowed to enter any stream or storm water conveyance structure.

6. Part II, B., 2., a., of NPDES General Permit ALG610000 requires the permittee to prepare and implement a Best Management Practices (BMP) plan which adequately controls, eliminates or reduces pollutants in stormwater runoff.

7. An inspection was conducted at the site on March 10th and 15th, 2000. The length of the future roadway was inspected. The following violations were noted: BMPs adequate to prevent or minimize erosion and sedimentation had not been implemented; slopes and other denuded areas had not been stabilized; and sediments were being discharged from disturbed areas and entering and

accumulating in waters of the State and adjacent wetland areas.

Bruce Higginbotham on behalf of the Tuscaloosa County Commission on April 12, 2000 submitted a response to the Department stating that BMPs were being implemented.

8. The Tuscaloosa County Commission and RaCON understand that this Consent Order addresses only those violations of the Department's Water Program covered in ADEM Admin. Code Div. 335-6 and identified in these FINDINGS. Potential violations of other regulatory programs administered by the Department are reserved from this Consent Order.

9. Although the Tuscaloosa County Commission and RaCON do not agree with certain Findings in this Consent Order, they do agree in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest same, with no admission of liability. In view of the above and their desire to comply with the provisions of the Act, Tuscaloosa County Commission and RaCON also agree 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 alleged in this 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 upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10) and 22-22-9, Code of Alabama 1975, as amended, and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That not later than thirty (30) days following the date of execution of this Consent Order, RaCON shall pay to the Department Fifteen Thousand Dollars (\$15,000) in full and final

settlement for the past violations cited herein.

B. That not later than forty-five (45) days from the date of execution of this Consent Order, the Permittee shall submit a plan to the Department for implementing appropriate permanent structural and non-structural BMP's (Part 1), for the assessment of sediment deposited in waters of the State and adjacent wetlands (Part 2), the removal of sediments resulting from the Permittee's construction activities and a mitigation plan for areas where removal of the sediment is not feasible (Part 3). Said plan shall specifically contain the following:

1. Part 1 of this plan shall, at a minimum, meet the standards found in the EPA document entitled "*Stormwater Management for Construction Activities*." Further said BMP's shall be adequate to prevent sediment in stormwater from leaving the construction site and shall also be adequate to prevent sediment in stormwater runoff discharging into waters of the State and adjacent wetlands from the construction site. A stormwater coordinator will be designated to oversee the implementation of the plan throughout the duration of the construction activities regardless of the contractor.

2. Part 2 of the submitted plan will include an evaluation of the sediment deposited off-site. This shall be accomplished in part by using a comparative soil/sediment analysis, the Universal Soil Loss Equation, the Modified Universal Soil Loss Equation, or another accepted method such as modeling or actual measurements. A timeline will be submitted denoting the amount and duration of rainfalls that occurred during the construction activity, the status of construction adjacent to impacted waters and/or wetlands at the time of the rainfall, the amount and type of soil exposed to the elements and an estimation of the amount of soil lost at these times. In addition an evaluation of the substrates of the impacted waters will be conducted to determine the extent of sediment deposition that occurred due to the construction activities. A qualified, credentialed professional will conduct the assessment (e.g. soil scientist or geologist). The plan will be subject to Department review and approval. In the event the Department makes comments on the plan, the plan will be immediately modified where appropriate to address the Department's comments on the plan, and any modifications shall be immediately implemented.

3. Part 3 of this plan shall ensure that, to the extent that Camp Parlow Lake, Mill Creek, Carrolls Creek, any impacted tributaries, and any impacted wetlands have been impacted by the permittee's construction activities, such waters and wetlands are returned to their pre-construction conditions unless a determination is made that such a return to pre-construction conditions would not be feasible without causing significant damage to fish, wildlife, and to the integrity of the stream channels. If such a determination is made, complete justification for this determination must be included in Part 3 along with supporting documentation. If such a determination is accepted by the Department, Part 3 of the plan shall ensure that the waters and/or wetlands are returned to their pre-construction conditions to the extent feasible, as defined above, and it shall ensure that the Camp Parlow Lake, Mill Creek, Carrolls Creek, and any impacted wetlands will achieve compliance with applicable water quality standards. In addition, for the areas where removal of the sediment is not feasible a mitigation plan will be developed, submitted for the Department's approval and implemented. In addition, the permittee and RaCON shall retain a qualified fisheries biologist to determine the impact of any sediment deposited in waters of the State and adjacent wetlands on the fishery resources and fish spawning. If these resources have been impacted, then the waters shall be restocked with fish species and numbers recommended by the fisheries biologist.

4. Part 3 of the plan shall be drawn to accomplish its objectives in consideration and accounting for the estimated amount of sediment discharged into the waters of the State and adjacent wetlands as determined in Part 2 of the plan. At a minimum, Part 3 of the plan shall address the method(s) of sediment removal (i.e. the use of suction dredges, floating turbidity screens, etc.) and the disposal (i.e. upland disposal areas, methods of dewatering and stabilization, treatment of water removed from sediments prior to discharging to waters of the State, etc.). The Department may, at its discretion, provide comments to the permittee on the plan after its submission.

5. Additionally, a qualified, credentialed professional must certify that the plan will satisfy the requirements of paragraph B (sections 1-5) of this Consent Order. For purposes of this Consent Order, a qualified, credentialed professional shall include a professional engineer (PE) licensed to practice in Alabama, and a Certified Professional in Erosion and Sediment Control (CPESC) as determined by the Soil and Water Conservation Society (SWCS) and the

International Erosion Control Association (IECA). A qualified, credentialed professional may also be a registered professional landscape architect, or other credentialed professional (registered land surveyor, registered geologist, registered forester, etc.) with the necessary education, proven experience, and professional certification acceptable to the Department. The credentialed professional must be familiar with current industry standards for erosion and sediment controls and must be able to inspect and assure that structural and non-structural BMP's or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of NPDES General permit ALG610000. Pursuant to ADEM Admin. Code Ch. 335-6-3 a professional engineer (PE) registered in the State of Alabama must certify the design and construction of structural practices such as SPCC plan containment structures, dam construction, etc. The plan will be subject to Department review and approval. However, the plan shall be implemented immediately. In the event the department makes comments on the plan, the plan will be immediately modified where appropriate to address the Department's comments on the plan, and any modifications shall be immediately implemented.

C. That the Tuscaloosa County Commission shall submit to the Department within thirty (30) days from the date of execution of this Consent Order, a certification by a credentialed, qualified professional licensed to practice in Alabama that the BMP plan has been fully and correctly implemented, and is effective in controlling, minimizing or reducing sediments from entering storm water runoff from the Western Bypass site.

D. That the Tuscaloosa County Commission shall submit to the Department within one hundred eighty (180) days from the date of execution of this Consent Order, a certification by a credentialed, qualified professional licensed to practice in Alabama that the off site sedimentation has been removed or stabilized.

E. That immediately upon the date of execution of this Consent Order, and continuing thereafter the Tuscaloosa County Commission shall conduct the monthly inspections required by Part

I.B. of NPDES General Permit ALG610000. A qualified, credentialed professional shall conduct these inspections. Further, the inspection results shall be provided to the Department in inspection reports which shall be certified by the qualified, credentialed professional for accuracy and shall be submitted to the Department by the 28th of the month following said inspection. The Department may release the Tuscaloosa County Commission from the requirements of this paragraph, upon written request from Tuscaloosa County Commission, following a demonstration of compliance with all paragraphs of this Consent Order and all requirements under NPDES General Permit ALG610000 for twelve (12) consecutive months. Said demonstration shall include copies of all data or other reports necessary to establish compliance for the twelve (12) month time period. Said release from this paragraph, if granted, shall not relieve the Tuscaloosa County Commission from any inspection or any other requirement under this Consent Order or General permit ALG610000.

F. Nothing in the foregoing schedule shall relieve the Tuscaloosa County Commission or RaCON, Inc. from the obligation to comply with the provisions of its permits, or the Act and the regulations except as addressed by stipulated penalties. Nothing in this Consent Order shall operate to relieve the Tuscaloosa County Commission or RaCON, Inc. of any liability for any violations occurring at the facility following issuance of this Consent Order, except that no further civil penalties for the violations identified in this Consent Order shall be assessed beyond those stipulated herein.

G. That immediately upon execution of this Consent Order, and continuing thereafter, the permittee shall comply with all other terms, conditions and limitations of NPDES General Permit ALG610000, and all applicable ADEM Admin. Code Regulations.

H. That this Consent Order shall apply to and be binding upon the 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.

I. 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. However, the issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against the Tuscaloosa County Commission or RaCON, Inc. for the violations identified herein.

J. That the Tuscaloosa County Commission or RaCON, Inc. are not relieved from any liability if either fails to comply with any provision of this Consent Order.

K. That for purposes of this Consent Order only, the Tuscaloosa County Commission and RaCON, Inc. acknowledge that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. The Tuscaloosa County Commission and RaCON, Inc. also acknowledge that in any action brought by the Department to compel compliance with the terms of this Consent Order, the Tuscaloosa County Commission and RaCON, Inc. shall be limited to the defenses of Force Majeure.

L. 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 in the above "FINDINGS". These allegations relate solely to the requirements of ADEM Admin. Code Div. 335-6. This Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs, or, should additional facts and circumstances be discovered in the future concerning the Tuscaloosa County Commission or RaCON, Inc. which would constitute possible violations not addressed in this Consent Order, or if the violations noted herein continue, then such future violations shall be addressed in other Orders as may be issued

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by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and neither the Tuscaloosa County Commission nor RaCON, Inc. shall object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

M. By agreement of the parties, this Consent Order shall be considered final and effective upon the signature of all parties. This Consent Order shall not be appealable, and the Tuscaloosa County Commission and RaCON, Inc. do hereby waive any administrative hearing on terms and conditions of same.

ORDERED and ISSUED executed in triplicate, each part being an original this the 6th July day of ~~June~~ 2000.

TUSCALOOSA COUNTY
COMMISSION

By: James L. Noles, Jr.Attorney for Tuscaloosa County Commission DirectorDATE: 6/30/00

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Jim WiltonDATE: 6 July 2000

RaCON, Inc.

By: K. C. C.DATE: 6-30-2000