

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

January 23, 2006

Mr. Dimitris Rentizios, Director of Operations Support
Affordable Residential Communities
Greenpark South Mobile Home Park
600 Grant Street (Suite 900)
Denver, Colorado 80203

Facsimiles: (334)

Administration: 271-7950
General Counsel: 394-4332
Communication: 394-4383
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

Re: **The Greenpark South Mobile Home Park**
Consent Order No.: 06-022-CDW

Dear Mr. Rentizios:

Please find enclosed ADEM Consent Order No.: 06-022-CDW which requires the Greenpark South Mobile Home Park to take certain actions in regard to alleged violations of the Alabama Safe Drinking Water Act. This Consent Order has been issued with the consent of The Greenpark South Mobile Home Park and the Department. The assessed civil penalties associated with this order have not been received by the Department.

If you have any questions, please do not hesitate to contact me at (334) 271-7774 or Mr. Loren Crawford at (334) 271-7788.

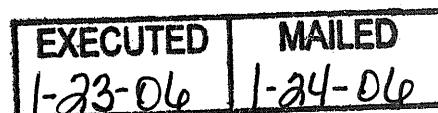
Sincerely,

A handwritten signature in cursive script, reading "Dennis Harrison".

Dennis Harrison, Chief
Drinking Water Branch

cc: Olivia H. Rowell, ADEM-General Counsel
James McIndoe, ADEM - Water Division
Loren Crawford, ADEM - Water Division
ADEM - Permits and Services Division
ADEM - Public Affairs Office
US EPA Region IV

Enclosures



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



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**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Greenpark South Mobile Home Park)
Pelham, AL)

PWSID NO. 001682)

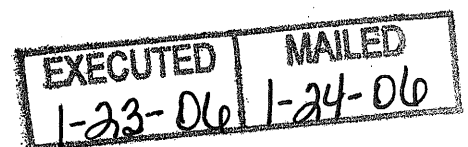
CONSENT ORDER NO. 06-022-CDW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Greenpark South Mobile Home Park (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Safe Drinking Water Act, Code of Alabama, 1975, §§ 22-22-30 through 22-23-53, as amended, and the regulations promulgated pursuant thereto (hereafter, "ADEM Admin. Code R").

STIPULATIONS

1. The Permittee was issued Water Supply Permit No. 2001-521 by the Department which authorizes the operation of a "public water system" as defined at §22-23-31, Code of Alabama (1975), as amended. The Permittee's public water system is a "Community Water System" as defined at §22-23-31, Code of Alabama (1975), as amended. The Permittee's public water system is also a consecutive public water system as defined in ADEM Admin. Code R. 335-7-1-.01.



2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, 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 drinking water regulations in accordance with the federal Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26. Additionally, pursuant to Code of Alabama (1975), §§ 22-23-49(2), the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act, Code of Alabama (1975), §§ 22-23-30 through 22-23-53, as amended.

4. ADEM Admin. Code R. 335-7-10-.03 (c) states that results of all water quality control tests shall be provided to the Department within ten days after the end of each month.

5. ADEM Admin. Code R. 335-7-10-.06 (1) states that in addition to the required monthly water quality control test reports, records of daily disinfectant levels shall be provided no later than the tenth of the following month.

6. The Permittee has failed to submit the following Monthly Operational Reports (MOR's) in accordance with ADEM Admin. Code Rs. 335-7-10-.03 (c) and 335-7-10-.06 (1).

- a. February, 2004 – MOR has not been received by ADEM.
- b. March, 2004 – MOR has not been received by ADEM.
- c. April, 2004 – MOR has not been received by ADEM.
- d. May, 2004 – MOR has not been received by ADEM.
- e. June, 2004 – MOR has not been received by ADEM.

- f. July, 2004 – MOR has not been received by ADEM.
- g. August, 2004 – MOR was received by ADEM on January 24, 2005.
- h. September, 2004 – MOR was received by ADEM on January 24, 2005.
- i. October, 2004 – MOR was received by ADEM on January 24, 2005.
- j. November, 2004 – MOR was received by ADEM on January 24, 2005.
- k. December, 2004 – MOR was received by ADEM on May 2, 2005.
- l. January, 2005 – MOR was received by ADEM on May 2, 2005.
- m. February, 2005 – MOR was received by ADEM on May 2, 2005.
- n. March, 2005– MOR has not been received by ADEM.
- o. April, 2005– MOR has not been received by ADEM.
- p. May, 2005– MOR has not been received by ADEM.
- q. June, 2005– MOR has not been received by ADEM.
- r. July, 2005– MOR has not been received by ADEM.
- s. August, 2005– MOR has not been received by ADEM.

7. The Permittee has failed to submit the following bacteriological analysis reports in accordance with ADEM Admin. Code Rs. 335-7-10-.03 (c) and 335-7-10-.06 (1).

- a. April, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
- b. May, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
- c. June, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.

- d. July, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - e. August, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - f. September, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - g. October, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - h. November, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - i. December, 2004 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - j. February, 2005 – Satisfactory bacteriological analysis reports have not been received by ADEM.
 - k. July, 2005 Satisfactory bacteriological analysis reports have not been received by ADEM.
 - l. August, 2005 Satisfactory bacteriological analysis reports have not been received by ADEM.
8. The Permittee was notified of these reporting violations as follows:
- a. The Permittee was issued a warning letter dated February 9, 2004 for failure to submit MOR's in accordance with ADEM Admin. Code Rs. 335-7-10-.03 (c) and 335-7-10-.06 (1).

- b. The Permittee was issued a Notice of Violation (hereinafter, NOV) dated March 29, 2004 for failure to submit MOR's in accordance with ADEM Admin. Code Rs. 335-7-10-.03 (c) and 335-7-10-.06 (1).
- c. The Permittee was issued a letter on July 21, 2004 giving the Permittee until August 16 to return to compliance.
- d. An annual inspection of the Permittee's public water system was performed on August 8, 2004. The subsequent inspection letter was issued to the Permittee on August 26, 2004. The inspection letter noted the violations and required a copy of all outstanding reports be submitted to the Department by September 30, 2004.
- e. The Permittee was issued an additional warning letter concerning late MOR's on September 10, 2004.
- f. The Permittee has been issued eight Monitoring Violation letters concerning the non-submittal of bacteriological analysis reports, beginning with the bacteriological monitoring violation in April 2004 and ending with bacteriological monitoring violation in January 2005.
- g. The Permittee was issued a warning letter on February 8, 2005 concerning late MOR's and late bacteriological analysis reports.
- h. The Permittee was issued a Maximum Contaminant Level (hereinafter "MCL") violation letter for exceeding the total coliform MCL in February 2005. This letter also referenced a monitoring violation for failure by the Permittee to collect repeat bacteriological samples and for failure to have the samples analyzed by a certified laboratory.

9. Regarding consecutive public water systems, ADEM Admin. Code R. 335-7-4-.11(a)2 states that

[a] purchase water contract shall be maintained by the Permittee that allows sufficient water to be purchased to meet all system demands during normal operating periods. Upon expiration of such contract, the system shall not exceed a period of more the 30 consecutive days without a revised contract to ensure that adequate water can be provided to all of its existing customers.

10. The Permittee has failed to submit to the Department a copy of a purchase agreement in accordance with ADEM Admin. Code R. 335-7-4-.11(a)2.

11. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein, and reserves its right to contest the alleged violations as against the Department or any third party in any proceedings, except as provided for in Code of Alabama (1975), § 22-22A-7(7).

12. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

13. Pursuant to Code of Alabama (1975), § 22-22A-5(18)c., in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature,

extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Although the Permittee operated in violation of Water Supply Permit No. 2001-521 for several months, there is no evidence of any harm to human health or the environment. Based on the alleged violations in this Consent Order and the problems associated with operating a public water system, the Permittee requested that it be allowed to relinquish Water Supply Permit No. 2001-521 and cease operating as a "community water system." The Department informed the Permittee that the permit could be voided if the Permittee agreed not to "sell potable water" to the public. The Permittee no longer bills its customers for potable water.

B. **THE STANDARD OF CARE:** The Permittee failed to keep and submit proper records and failed to conduct proper sampling procedures.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Although some economic benefit has been realized by the failure to take the actions necessary to comply with the requirements of the permit, the Department has been unable to quantify that economic benefit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The permitted facility has a record of previous violations, but most of the violations were resolved after the present Permittee took ownership of the permitted facility.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Code of Alabama (1975), § 22-22A-5(18)c., as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged

herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of eight thousand eight hundred thirteen dollars (\$8,813) in settlement of the violations alleged herein within 45 days from the effective date of this Consent Order. Failure to pay the civil penalty within 45 days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees 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

C. The Permittee agrees to send a copy of a certified letter to the Department, C/O the Office of General Counsel stating that in the future customers will not be billed separately for potable drinking water. This letter must also detail the manner in which the Greenpark South Mobile Home Park plans to finance the maintenance of the water distribution mains in the mobile home park.

D. The Permittee agrees to comply with the terms, limitations, and conditions of the Water Supply Permit No. 2001-521 issued on April 25, 2001 each and every day hereafter until such time as all requirements of this Consent Order are satisfied and the permit is voided.

E. The parties agree 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.

F. 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.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 Permittee, 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 have been beyond the reasonable control of the Permittee) and which delays or prevents performance 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 10 working 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 Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and the Permittee agree 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 may 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 Permittee 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.

J. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent

Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

K. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty (30) days within which to comment on the Order.

M. The Department and the Permittee agree 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 hereof shall remain in full force and effect.

N. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and the Permittee agree that, except as 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 Permittee of its obligations to comply in the future with any permit.

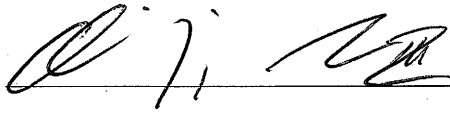
Executed in duplicate, with each part being an original.

GREENPARK SOUTH MHP

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Dimitris Rentzios
Director of Operations Support
Affordable Residential Communities



Onis "Trey" Glenn, III, Director
Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 271-7700

Date: 11/21/05

Date: 11/23/06