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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

DIRECTOR

BOB RILEY

GOVERNOR

April 13, 2005

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

Ms. Mary Ann Stallworth, Chairman
Deer Park-Vinegar Bend Water & FPA
Post Office Box 249
Deer Park, Alabama 36529

RE: Deer Park-Vinegar Bend Water & FPA
Consent Order NO. 05-067-CDW

Dear Ms. Stallworth:

Please find enclosed ADEM Consent Order No. 05-067-CDW which requires the Deer Park-Vinegar Bend Water & FPA to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the Deer Park-Vinegar Bend Water & FPA and the Department.

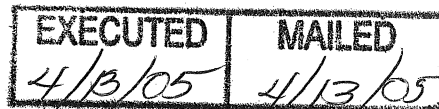
If you have any questions, please do not hesitate to contact me at (334) 271-7774 or Mr. Michael Barilone at (334) 271-7776.

Sincerely,

Ed Hughes, Chief
Drinking Water Branch

cc: Olivia H. Rowell, ADEM-General Counsel
James McIndoe, ADEM – Water Division
Michael Barilone, 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
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4171 Commanders Drive
Mobile, Alabama 36615-1421
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(251) 432-6598 [Fax]



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ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

DEER PARK-VINEGAR BEND WATER)
AND FIRE PROTECTION AUTHORITY)

PWSID NO. 0001368)
_____)

CONSENT ORDER
NO.05-067-CDW

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Safe Drinking Water Act, Code of Alabama (1975), §§ 22-23-30 through 22-23-53, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. The Deer Park-Vinegar Bend Water and Fire Protection Authority (hereinafter, "the Permittee") was issued Water Supply Permit No. 2005-506 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 public water system is

also a "Community Water System" as defined at §22-23-31, Code of Alabama 1975, as amended.

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

3. Pursuant to Code of Alabama, 1975, §§ 22-22A-4(n), as amended, provides that 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), and 335-7-10-.06 (1), 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. The Permittee has failed to submit the required Monthly Operational Reports (MOR's) in accordance with ADEM Admin. Code R. 335-7-10-.03 (c), and 335-7-10-.06 (1).

6. The Permittee was issued a Notice of Violation (NOV) dated March 12, 2004 for failure to submit MOR's in accordance with ADEM Admin. Code R. 335-7-10-.03 (c), and 335-7-10-.06 (1).

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

- a. November, 2003 - Received late by ADEM on 3/16/2004
- b. December, 2003 - Received late by ADEM on 3/16/2004
- c. January, 2004 - Received late by ADEM on 3/16/2004
- d. February, 2004 - Received late by ADEM on 3/16/2004
- e. May, 2004 - Received late by ADEM on 6/29/2004
- f. June, 2004 - Received late by ADEM on 7/23/2004
- g. July, 2004 - Received late by ADEM on 8/23/2004
- h. August, 2004 - Received late by ADEM on 9/27/2004
- i. September, 2004 - Received late by ADEM on 10/14/2004
- j. October, 2004 - Received late by ADEM on 12/9/2004

8. The Permittee neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, the Permittee consents to the terms of this Consent Order.

9. The Department agrees to 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 upon the foregoing FINDINGS pursuant to Code of Alabama (1975) §§ 22-22A-5(10), 22-22A-5(18), 22-23-43, 22-22A-5(12), 22-22-9(i), and 22-22-9(k), as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That, immediately upon receipt of notice of this Consent Order, and continuing thereafter, the Permittee shall comply with ADEM Admin. Code R. 335-7-10-.03 (c), and 335-7-10-.06 (1), and the conditions of ADEM Water Supply Permit 2005-506 that require Monthly Operational Reports (MOR's) be received by the Department no later than the tenth of the month following the reporting period.

B. That, the Permittee shall pay to the Department a stipulated penalty in the amount of **\$125.00** for each month that the Permittee fails to submit MOR's to the Department in accordance with ADEM Admin. Code R. 335-7-10-.03 (c), and 335-7-10-.06 (1). The stipulated penalties shall be in force immediately upon receipt of notice of this Consent Order, and continue thereafter, for a period of twelve months. Stipulated penalties incurred pursuant to this Order shall be due without notice to the Permittee by the Department. Stipulated penalties must be submitted by the Permittee with the Permittee's first

Monthly Operating Report (MOR) the month after the stipulated penalties were incurred, but in no instance later than the 10th day of the month after they were incurred.

C. 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

All checks shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

D. That, immediately upon receipt of notice of this Consent Order, and continuing thereafter, the Permittee shall comply with all the monitoring, operating and reporting provisions and all other limitations, terms and conditions of Water Supply Permit 2005-506 and ADEM Admin Code Ch. 335-7 to the extent not inconsistent with this Order, and shall continue to comply with said monitoring, operating, and reporting provisions each and everyday thereafter until the re-issuance of the permit.

E. 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. 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.

G. That, the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. That, 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 a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. 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 defense 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

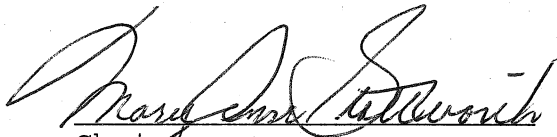
exercise of due diligence will not be considered to be beyond the reasonable control of the Permittee) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation 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 10 days prior to the original anticipated completion date. If the Department, after review of the extension requests, 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 specific circumstances.

I. 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 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. 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 Permittee does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.


Chairman

Deer Park-Vinegar Bend Water
and Fire Protection Authority

Date: 04-08-2005


ONIS "TREY" GLENN, III
Director

Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 271-7700

Date: 4/13/05