

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301463 36130-1463 ♦ 1400 COLISEUM BLVD. 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

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

BOB RILEY
GOVERNOR

FEB 10 2006

CERTIFIED MAIL (No. 7004 2510 0001 3988 8006)
RETURN RECEIPT REQUESTED

Mr. and Mrs. Schofield, Owners
Swan Lake Trailer Park
1540 Magnolia Drive
Highland Home, Alabama 36041

Re: Revised Consent Order
NPDES Permit No. AL0059234
Swan Lake Trailer Park
Montgomery County

Dear Mr. and Mrs. Schofield:

Please find enclosed ADEM Consent Order No. 06-031-CWP which requires you to take certain actions at the Swan Lake Trailer Park Lagoon in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the Swan Lake Trailer Park and the Department. Please note that there is no assessed civil penalty.

If you have any questions, please do not hesitate to contact Mr. James W. Grassiano, Chief of the Municipal Section at (334) 271-7801 or Ms. Vernetta J. Palmer at (334) 394-4365.

Sincerely,

GLENN L. DEAN

Glenda L. Dean, Deputy Chief
Water Division

Enclosures

Cc: Glenda Dean, ADEM-Water Division (e-mail)
James W. Grassiano, ADEM-Water Division (e-mail)
Olivia H. Rowell, Office of General Counsel (e-mail)
ADEM-Public Affairs Office (e-mail)
Arthur Collins, US EPA Region IV

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]



Printed on Recycled Paper

IN THE MATTER OF:

CONSENT ORDER

NO. 06-031-CWP

1. The Permittee operates a wastewater treatment lagoon known as the Swan Lake Trailer Park Lagoon located on Highway 31 South, Hope Hull, in Montgomery County, Alabama. The wastewater treatment lagoon discharges pollutants from a point source into an unnamed tributary of Pintlala Creek, a water of the state.

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 § 22-22A-4(n), Code of Alabama 1975, 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. § § 1342 *et. seq.* In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, § § 22-22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. On February 3, 2004, the Department issued the Permittee's NPDES Permit Number AL0059234 (hereinafter "the Permit") which established limitations on the discharge of pollutants from such point source, designated therein as outfall number 001, into an unnamed tributary of Pintlala Creek. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The DMR's submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned unnamed tributary of Pintlala Creek in violation of the limits imposed by the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

7. 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 violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

8. Pursuant to Code of Alabama (1975), § 22-22A-5(18)c., in determining the amount of the 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 the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Violations consisted of exceeding the weekly average and monthly average permit limitations for the following conventional pollutants: carbonaceous biochemical oxygen demand, total suspended solids, total suspended solids percent removal and biochemical oxygen demand percent removal and fecal coliform. The violations also consisted of exceeding the imposed daily minimum and maximum permit limitations for dissolved oxygen and pH (i.e.,

conventional pollutants). The Department has no evidence of irreparable harm to the environment or to the health and safety of the public as a result of these violations.

B. THE STANDARD OF CARE: While there are no known operational problems, the Permittee failed to maintain compliance with its permit limitations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit conferred by the delay of compliance with permit limitations.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has had violations during the previous permitting cycle for the following parameters: pH, carbonaceous biochemical oxygen demand, total suspended solids, total ammonia as nitrogen, carbonaceous biochemical oxygen demand percent removal and total suspended solids percent removal. On August 27, 2001 the Department issued a Notice of Violation (NOV) to the Permittee for violations of the following parameters: carbonaceous biochemical oxygen demand, total suspended solids, pH, and total ammonia as nitrogen. From June 2002 to June 2003 there were a total of 15 violations of the aforementioned parameters.

F. THE ABILITY TO PAY: The Permittee has an inability to pay the civil penalty based upon pertinent information made available to the Department.

G. OTHER FACTORS: It should be noted that the 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, 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 cited herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to prepare and submit an Engineering Report to the Department not later than ninety (90) days after the effective date of this Consent Order. The Engineering Report shall include a schedule for implementation (i.e., Compliance Plan) identifying the potential causes of noncompliance and must present the results of an investigation of the changes that are necessary for the Permittee to implement in order to achieve compliance with NPDES Permit Number AL0059234. At a minimum, the Permittee shall consider each of the following in making that determination: the need for changes in maintenance and operating procedures; the need for modification of existing treatment works; and the need for new or additional treatment works. The Engineering

Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the NPDES permit, then the Permittee shall modify the submittal so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted no later than 30 days after receipt of the Department's comments. The Permittee agrees to have completed implementation of the recommendations in the Engineering Report no later than 305 days after the effective date of this Consent Order.

B. The Permittee agrees to prepare and submit semi-annual progress reports describing in detail the Permittee's progress towards achieving compliance with items in the Compliance Plan beginning six months after the effective date of this Consent Order and continuing every six months thereafter that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, not later than fourteen (14) days following each applicable due date contained in this Consent Order, the Permittee shall submit a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause of noncompliance, the corrective action taken, and the Permittee's ability to comply with any remaining requirements of this Consent Order.

C. The Permittee agrees to comply with the pH, Fecal Coliform, CBOD₅, TSS, CBOD₅ percent removal and TSS percent removal limitations imposed by NPDES Permit Number AL0059234 no later than 365 days after the date of entry of this Consent Decree. The Permittee further agrees to comply with all other terms, conditions, and

limitations of its NPDES permit immediately upon the effective date of this Consent Order.

D. The Permittee agrees that, after the effective date of this Consent Order, for every violation of the NPDES Permit effluent limitations, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0059234, it shall pay to the Department the sum of one-hundred dollars (\$100.00) for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and two-hundred (\$200.00) for each and every monthly average violation.

E. The parties agree that the cumulative stipulated penalties described in paragraph D above shall under no circumstances exceed twenty-four thousand dollars (\$24,000). Once stipulated penalties of twenty-four thousand dollars (\$24,000) are due to the Department and violations continue to occur, or, should violations continue to occur after three hundred sixty-five (365) days after the effective date of this Consent Order, then the Department shall be free to issue additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

F. The Permittee agrees that payment of stipulated penalties due for violations of effluent limitations under this Consent Order shall be due not later than the 28th day of the month following the monitoring period in which there were violations. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

G. 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.

H. The parties agree 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 cited in this Consent Order.

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

J. 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 that 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.

K. 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.

L. 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.

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

N. The Department and the Permittee agree that final approval and entry into this Consent 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 Consent Order.

O. The Department and the Permittee agree that, should any provision of this Consent 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.

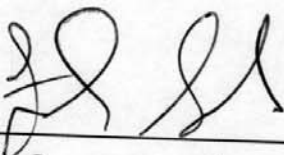
P. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

Q. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent 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.

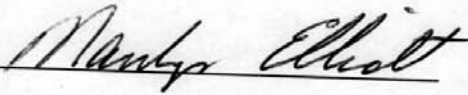
Executed in duplicate, with each part being an original.

SWAN LAKE TRAILER PARK

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 

By:



Its: SWAN LAKE LLC

Its:

Date: 2/9/06

Date:

2-9-06

Attachment 1

AL0059234

SWAN LAKE TRAILER PARK LAGOON

DMR Value Limit Units Averaging Time

Outfall ID: 001

July, 2003					April, 2005				
1	<u>CBOD 5-DAY</u>				28	<u>CBOD 5-DAY</u>			
2	24	10	mg/l	Monthly Average	28	30.0	24.0	mg/l	Monthly Average
	24	15	mg/l	Weekly Average					
December, 2003					June, 2005				
3	<u>CBOD 5-DAY</u>				29	<u>TSS</u>			
4	101	24	mg/l	Monthly Average	29	118.7	90.0	mg/l	Monthly Average
	101	36	mg/l	Weekly Average					
5	<u>CBOD 5-DAY PERCENT REMOVAL</u>				30	<u>CBOD 5-DAY</u>			
	42	85	%	Percent Removal	30	28.2	5.0	mg/l	Monthly Average
March, 2004					31	34.5	7.5	mg/l	Weekly Average
6	<u>CBOD 5-DAY</u>				31	<u>CBOD 5-DAY PERCENT REMOVAL</u>			
	33	24	mg/l	Monthly Average	32	57.9	65.0	%	Percent Removal
August, 2004					32	<u>TSS PERCENT REMOVAL</u>			
7	<u>CBOD 5-DAY</u>				33	0.0	65.0	%	Percent Removal
8	16	5	mg/l	Monthly Average	July, 2005				
	16	7.5	mg/l	Weekly Average	34	<u>pH</u>			
9	<u>TSS PERCENT REMOVAL</u>				34	9.5	8.5	s.u.	Daily Maximum
	12.7	65	%	Percent Removal	35	<u>TSS</u>			
10	<u>DISSOLVED OXYGEN</u>				35	104	90	mg/l	Monthly Average
	5.6	6	mg/l	Daily Minimum	36	<u>FECAL COLIFORM</u>			
September, 2004					36	350	200	#/100ml	Monthly Average
11	<u>pH</u>				37	<u>CBOD 5-DAY</u>			
	10.1	8.5	s.u.	Daily Maximum	37	21	5	mg/l	Monthly Average
12	<u>CBOD 5-DAY</u>				38	21	7.5	mg/l	Weekly Average
13	18.0	5.0	mg/l	Monthly Average	39	<u>CBOD 5-DAY PERCENT REMOVAL</u>			
	19	7.5	mg/l	Weekly Average	39	0	65	%	Percent Removal
14	<u>TSS PERCENT REMOVAL</u>				40	<u>TSS PERCENT REMOVAL</u>			
	64	65	%	Percent Removal	40	0	65	%	Percent Removal
October, 2004									
15	<u>pH</u>								
	9.2	8.5	s.u.	Daily Maximum					
16	<u>TSS</u>								
	95.7	90	mg/l	Monthly Average					
17	<u>CBOD 5-DAY</u>								
18	15	5.0	mg/l	Monthly Average					
	29	7.5	mg/l	Weekly Average					
November, 2004									
19	<u>pH</u>								
	9.8	8.5	s.u.	Daily Maximum					
December, 2004									
20	<u>pH</u>								
	8.90	8.5	s.u.	Daily Maximum					
21	<u>FECAL COLIFORM</u>								
	1420	1000	#/100ml	Monthly Average					
22	2840	2000	#/100ml	Weekly Average					
23	<u>CBOD 5-DAY PERCENT REMOVAL</u>								
	20.0	65	%	Percent Removal					
January, 2005									
24	<u>pH</u>								
	9.40	8.5	s.u.	Daily Maximum					
March, 2005									
25	<u>CBOD 5-DAY</u>								
	29.0	24.0	mg/l	Monthly Average					
26	<u>CBOD 5-DAY PERCENT REMOVAL</u>								
	62.9	65	%	Percent Removal					
27	<u>TSS PERCENT REMOVAL</u>								
	0.0	65	%	Percent Removal					