

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

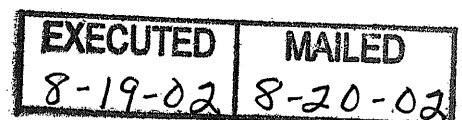
IN THE MATTER OF)
)
)

WOLF BAY PLANTATION INC)
PLANTATION HARBOUR RV PARK)
ELBERTA, ALABAMA)
_____)

CONSENT ORDER NO. 02-223-CMNPS

FINDINGS

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



1. Wolf Bay Plantation, Inc. (hereinafter the "Permittee") is constructing the residential RV Park, Plantation Harbour RV Park, located in Elberta, Alabama.

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 federal Water Pollution Control Act, 33 U.S.C. §§ 1251 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. On November 5, 1999, the Department issued to the Permittee ALR104789 under NPDES Permit Number ALG610000 ("the Permit") subject to certain terms, conditions, and limitations.

5. Code of Alabama (1975), §§ 22-22-9(e) and 22-22A-5(17), (18), and (19), as amended, require any person discharging, or applying to discharge, pollution into waters of the state to make such reports as the Department may reasonably require.

6. Part I, D, 4, a, of ALG610000 requires that the Permittee furnish to the Director or his designee, within a reasonable time, any information which the Director or his designee may request to determine whether cause exists for, suspending, or revoking the permittee's authorization to discharge under this

General Permit, in whole or in part, or to determine compliance with this permit or to determine if the permittee should be required to apply for an individual NPDES permit.

7. Part II, B, 2, a and b , of ALG610000 requires the permittee to implement and maintain adequate Best Management Practices to prevent/minimize the discharge of all sources of pollution to State waters in runoff.

8. On November 27, 2001, Department personnel inspected the above-referenced construction site. The inspection revealed that BMPs had not been fully implemented or adequately maintained. A Warning Letter was issued on November 29, 2001 requiring a written response with corrective actions, an updated BMP plan, and a compliance schedule to be received by the Department within fourteen days. The Department, as of this date, has not received a response.

7. On May 7, 2002, Department personnel conducted a follow up inspection of the above-referenced site. The inspection revealed that BMPs had not been fully implemented or adequately maintained. A Warning Letter was issued on May 8, 2002 requiring a written response with corrective actions and an updated BMP plan within fourteen days. The Department, as of this date, has not received a response.

8. On June 17, 2002, Department personnel conducted a follow up inspection of the above-referenced site. The inspection revealed BMPs had not been fully implemented or adequately maintained.

9. Wolf Bay Plantation, Inc. 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 Alabama Water Pollution Control Act, Wolf Bay Plantation, Inc. has consented 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 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 Wolf Bay Plantation, Inc., it is hereby ORDERED:

A. That, not later than 30 days after the effective date of this Consent Order, Wolf Bay Plantation, Inc. shall pay to the Department a civil penalty in the amount of \$3,500.00 for the violations cited herein.

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 Permittee will comply with all terms, conditions and limitations of the Permit, including but not limited to all monitoring and reporting requirements and all Best Management Practices requirements, until released from the Permit.

D. That, within fourteen (14) days from the date this Order becomes final, the Permittee will submit for the Department's review and comment a site specific plan for implementing appropriate permanent structural or non-structural Best Management Practices adequate to prevent or minimize the discharge of sediment or other pollutants to waters of the State. This plan must meet the requirements of the United States Environmental Protection Agency's *Stormwater Management for Construction Activity* documents. This plan must be prepared and certified by a qualified credentialed professional licensed in the State of Alabama.

E. That, within thirty (30) days from the date the Department completes review and comment of the above plan, the Permittee will submit to the Department certification that the plan referenced by Paragraphs D, above, is fully implemented and effective in controlling the discharge of pollutants in storm water runoff. This certification must be prepared and executed by the qualified credentialed professional that prepared the plan.

F. 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.

G. 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.

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

I. 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 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 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 7 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 specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

J. 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.


K. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This

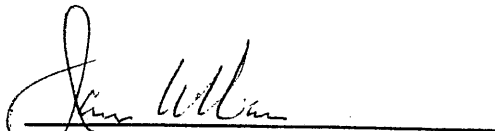
Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Wolf Bay Plantation, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Name of Authorized Representative)


Title


James W. Warr

Director

Date Signed: Aug - 7 - 02

Date Signed: 19 Aug 2002