

ONIS "TREY" GLENN, III  
DIRECTOR



Alabama Department of Environmental Management  
adem.alabama.gov

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

BOB RILEY  
GOVERNOR

APR 24 2008

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. William Cardwell, Owner  
Cahaba Mobile Home Estates, Inc.  
103 Madison Drive  
Trussville, Alabama 35173



RE: Consent Order No. 08-134-CWP  
NPDES Permit AL0057487  
Cahaba Mobile Home Estates Lagoon  
Jefferson County, Alabama

Dear Mr. Cardwell:

Please find enclosed ADEM Consent Order No. 08-134-CWP which requires you 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 both the Cahaba Mobile Home Estates Lagoon and the Department. Please note that the assessed civil penalty is due within 45 days.

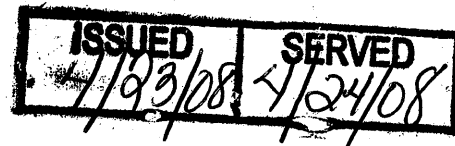
If you have questions regarding this matter, please contact Kimberly Minton at (334) 394-4367.

Sincerely,

James E. McIndoe, Chief  
Water Division

Enclosure

cc: Olivia H. Rowell, Office of General Counsel  
ADEM-Public Affairs Office  
Vernon H. Crockett, ADEM - Water Division  
James H. Carlson, ADEM - Water Division  
Kimberly Minton, ADEM - Water Division



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

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



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

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

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Cahaba Mobile Home Estates, Inc.**

**Cahaba Mobile Home Estates Lagoon  
Trussville, Jefferson County, AL**

**NPDES Permit No. AL0057487**

Consent Order No. 08-134-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Cahaba Mobile Home Estates, Inc. (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Permittee operates a wastewater treatment facility known as the Cahaba Mobile Home Estates Lagoon located in Trussville, Jefferson County, Alabama. The wastewater treatment facility discharges pollutants from a point source into the Cahaba River, a water of the state. The Cahaba River is impaired with regard to nutrients and siltation, and a final Nutrient Total Maximum Daily Load (herein after "TMDL") for

the Cahaba River Watershed was approved by the Environmental Protection Agency in October 2006.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. On July 12, 2004, the Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0057487 (hereinafter "the Permit") to the Permittee, establishing limitations on the discharge of pollutants from a point source, designated therein as Outfall Number 001, into the Cahaba River. 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 DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from Outfall 001 into the Cahaba River in violation of the limitations established in the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

6. The Department issued a Notice of Violation to the Permittee in January

2007, addressing effluent limit violations specifically for the Five Day Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD5"), Total Suspended Solids (hereinafter "TSS"), and Fecal Coliform (hereinafter "FC") parameters. The violations occurred during the months of August 2006, September 2006, and October 2006.

7. The Permittee violated Part I.C.1 of the Permit by failing to submit a DMR for the month of July 2006.

8. Sometime after July 1, 2006, the Permittee began implementing chlorine disinfection to control its FC levels. However, the Permittee is not presently permitted to use chlorine disinfection as part of its treatment process. Therefore, the Permittee is in violation of Permit limitations because it is not authorized to discharge chlorinated water into the Cahaba River.

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

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations alleged 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***

Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), 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 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. 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:** The violations consisted of exceeding the weekly and monthly average permit limits for CBOD5, the monthly average permit limits for TSS and Ammonia-Nitrogen (hereinafter "NH3-N"), and the monthly average and daily maximum permit limits for FC. In addition, based on the Department's records, the Permittee failed to submit a DMR in accordance with the Permit requirements. However, the Permittee contends the DMR was properly submitted and has since submitted a copy of the DMR. The Permittee has also been discharging chlorinated water without properly applying for a permit to implement chlorination. As a result, the Permittee's NPDES Permit does not presently include the necessary permit limitation for Total Residual Chlorine (hereinafter "TRC"). However, the Permittee has implemented dechlorination methods to minimize the negative effects of chlorination on the environment. The Department has no evidence of irreparable harm to the environment or any threat to the health and safety of the public as a result of these violations. However, the Cahaba River is impaired due to nutrients and siltation and the above alleged violations may be contributing to the impairment.

B. THE STANDARD OF CARE: The Permittee failed to maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit. The Permittee also failed to apply for an appropriate permit modification to regulate the discharge of TRC prior to initiating discharge of chlorinated effluent. The Permittee has since applied for the appropriate permit modification.

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 the 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 the violations.

E. HISTORY OF PREVIOUS VIOLATIONS: Violations of a similar nature and degree have been reported in the period prior to the two year period addressed by this Consent Order.

F. THE ABILITY TO PAY: Based on information available to the Department, the Department believes that the Permittee has a limited ability to pay a 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, 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 Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), 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 \$4,900.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five 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 prepare and submit an Engineering Report to the Department not later than ninety days after the effective date of this Consent Order. The Engineering Report must include a schedule for implementation of corrective actions (i.e., a Compliance Plan) that identifies the potential causes of noncompliance, including Infiltration and Inflow in the collection system, and that summarizes the Permittee's

investigation of the changes necessary for the Permittee to implement to achieve compliance with NPDES Permit Number AL0057487 and the Cahaba River Nutrient TMDL. At a minimum, the Permittee must consider each of the following in making its determination: the need for changes in maintenance and operating procedures, the need for modification of existing treatment system and collection works, and the need for new or additional facilities and collection works. The Compliance Plan presented in the Engineering Report must include a milestone completion date for each phase of corrective actions necessary to accomplish compliance with Permit limitations and the Cahaba River Nutrient TMDL. 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 Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department no later than thirty days after receipt of the Department's comments. The Permittee agrees to complete implementation of the recommendations provided in the Engineering Report in accordance with the accepted schedule presented in the Compliance Plan and as required by this Order.

D. The Permittee agrees to prepare and submit Semi- Annual progress reports to the Department describing in detail the Permittee's progress towards completing the items presented in the Compliance Plan. These reports shall be submitted beginning six months after the effective date of this Consent Order and shall continue to be submitted every six months thereafter that the Permittee's performance of the obligations under this Consent Order remain incomplete. In addition, not later than fourteen 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 shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. The Permittee agrees to comply with the CBOD5, FC, TSS, and NH3-N permit limitations of the Permit no later than the date(s) specified in the accepted Engineering Report, and it shall continue to do so each and every day thereafter during the life of the Permit. The Permittee further agrees to comply with all other terms, conditions, and limitations of its Permit immediately upon the effective date of this Consent Order. Furthermore, the Permittee agrees to complete implementation of the necessary improvements to achieve the Waste Load Allocation of the Cahaba River Nutrient TMDL no later than the date(s) specified in the approved Engineering Report.

F. The Permittee agrees that, after the effective date of this Consent Order, for every violation of the Permit effluent limitations, except for upsets that have been properly documented and substantiated as required by Part II.C.2 of NPDES Permit Number AL0057487, the Permittee shall pay to the Department the sum of \$100.00 for each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$150.00 for each and every monthly average violation.

G. The Permittee agrees that, after the effective date of this Consent Order, it shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by paragraphs A, C, and D contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as

follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs A, C, D, and E the Department reserves the right to file a new action against the Defendant.

H. The parties agree that the cumulative stipulated penalties described in paragraphs F and G above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 are due to the Department and violations continue to occur, or, should violations continue to occur after the final compliance date presented in the approved Engineering Report, then the Department shall be free to issue additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or another court of competent jurisdiction to enforce compliance of this Consent Order.

I. 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 28<sup>th</sup> 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.

J. 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.

K. 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 which are cited in this Consent Order.

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

M. 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, that could not be overcome by due diligence (i.e., causes that 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 that 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 ten 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.

N. 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.

O. 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.

P. 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.

Q. 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 days within which to comment on the Consent Order.

R. 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.

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

T. 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.

CAHABA MOBILE  
HOME ESTATES, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: *William J. Caldwell*

By: *Mandy Elliott*

Its: *Owner*

Its: *Deputy Director*

Date: *2/21/08*

Date: *April 23, 2008*

**CERTIFICATE OF SERVICE**

I, Carolyn K. Overman, hereby certify that I  
have this date served the foregoing Administrative Order on  
William Cardwell by regular United States Mail, properly addressed  
and postage prepaid to:

Mr. William Cardwell, Owner  
Cahaba Mobile Home Estates, Inc.  
103 Madison Drive  
Trussville, Alabama 35173

Done this 24<sup>th</sup> day of April, 2008.

Carolyn K. Overman  
Name

# Attachment 1

AL0057487 CAHABA MOBILE HOME ESTATES  
LAGOON

Outfall ID: 0011

March, 2006

## FECAL COLIFORM

1	4700	1000	#/100 ml	Monthly Geo Mean
2	4700	2000	#/100 ml	Daily Maximum

April, 2006

## FECAL COLIFORM

3	7200	1000	#/100 ml	Monthly Geo Mean
4	7200	2000	#/100 ml	Daily Maximum

May, 2006

## BOD CARBONACEOUS 5DAY 20C

5	26	25	mg/l	Monthly Average
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## FECAL COLIFORM

6	6000	1000	#/100 ml	Monthly Geo Mean
7	6000	2000	#/100 ml	Daily Maximum

## TSS

8	92	90	mg/l	Monthly Average
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August, 2006

## BOD CARBONACEOUS 5DAY 20C

9	25.4	25	mg/l	Monthly Average
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September, 2006

## BOD CARBONACEOUS 5DAY 20C

10	34.3	25	mg/l	Monthly Average
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## F. COLIFORM SUMMER TIME

11	2290	200	#/100 ml	Monthly Geo Mean
12	2290	2000	#/100 ml	Daily Maximum

## TSS

13	96	90	mg/l	Monthly Average
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October, 2006

## FECAL COLIFORM

14	3100	1000	#/100 ml	Monthly Geo Mean
15	3100	2000	#/100 ml	Daily Maximum

December, 2006

## FECAL COLIFORM

16	6000	1000	#/100 ml	Monthly Geo Mean
17	6000	2000	#/100 ml	Daily Maximum

## NITROGEN AMMONIA TOTAL N

18	10.7	10	mg/l	Monthly Average
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February, 2007

## FECAL COLIFORM

19	9500	1000	#/100 ml	Monthly Geo Mean
20	9500	2000	#/100 ml	Daily Maximum

March, 2007

## FECAL COLIFORM

21	1910	1000	#/100 ml	Monthly Geo Mean
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## TSS

22	94	90	mg/l	Monthly Average
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April, 2007

## FECAL COLIFORM

23	8800	1000	#/100 ml	Monthly Geo Mean
24	8800	2000	#/100 ml	Daily Maximum

June, 2007

## BOD CARBONACEOUS 5DAY 20C

25	14.19	8.13	lbs/day	Monthly Average
26	14.19	12.1	lbs/day	Weekly Average
27	71.2	25	mg/l	Monthly Average
28	71.2	37.5	mg/l	Weekly Average

August, 2007

## BOD CARBONACEOUS 5DAY 20C

29	39.4	25	mg/l	Monthly Average
30	39.4	37.5	mg/l	Weekly Average

September, 2007

## BOD CARBONACEOUS 5DAY 20C

31	11.73	8.13	lbs/day	Monthly Average
32	58.6	25	mg/l	Monthly Average
33	58.6	37.5	mg/l	Weekly Average

October, 2007

## TSS

34	96	90	mg/l	Monthly Average
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November, 2007

## FECAL COLIFORM

35	1260	1000	#/100 ml	Monthly Geo Mean
36	3500	2000	#/100 ml	Daily Maximum