

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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MONTGOMERY, ALABAMA

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

DIRECTOR

BOB RILEY

GOVERNOR

June 19, 2007

CERTIFIED MAIL

7005 1820 0003 1876 8897

VERNON GREEN

1115 HWY 11

PETAL MS 39465

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: ADMINISTRATIVE ORDER 07-131-MNPS

Timber Harvesting Site

Marion County (093)

Winfield, AL, T13S, R11W, S8

Dear Mr. Green:

Enclosed please find the above-referenced Administrative Order which requires certain actions to be taken regarding violations of applicable environmental laws and regulations. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of the operator/owner.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1) this Order may be appealed by filing a request for hearing before the Environmental Management Commission within thirty (30) days after receiving this Order. The request should be addressed to the Chair of the Environmental Management Commission and should comply with the requirements of ADEM Admin. Code R. 335-2-1-.04. Copies of ADEM Admin. Code, Div. 2, Environmental Management Commission regulations can be viewed or downloaded from ADEM's WebPage at <http://www.adem.state.al.us/Regulations/regulations.htm> or may be obtained by submitting a request in writing to the ADEM Permits & Services Division.

Should you have any questions concerning this matter, please contact **Aaron Peters, Mining & Nonpoint Source Section**, by email at dapeters@adem.state.al.us or by phone at (334) 394-4310.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steve Jenkins", is written over a horizontal line.

Steven O. Jenkins, Chief
Field Operations Division

soj/dap File:EUO/

c: Water Management Division, EPA Region IV

Enclosure: Copy of Final Order

Office of Public Affairs, ADEM

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

VERNON GREEN

TIMBER HARVESTING SITE

HAROLD BEASLEY PROPERTY

WINFIELD, ALABAMA, T13S, R11W, S8

MARION COUNTY, ALABAMA

UNPERMITTED SITE

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) ORDER 07-131-MNPS
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FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (1997 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM") Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department makes the following FINDINGS:

1. Vernon Green (hereinafter "Operator"), conducted a timber harvesting operation at the Harold Beasley property (hereinafter "Site") located on Highway 78 east of Winfield, in Township 13 South, Range 11 West, Section 8, in Marion County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

3. Section 22-22-9(i)(3), Ala. Code (1997 Rplc. Vol.), requires every person, prior to discharging any new or increased pollutants into any waters of the state, to apply in writing for permit coverage and obtain such permit coverage before discharging such pollutants. ADEM Admin. Code r. 335-6-6-.03 states that no person shall discharge pollutants into waters of the state without first having obtained valid National Pollutant Discharge Elimination System (hereinafter "NPDES") permit coverage.

4. The Alabama Forestry Commission (hereinafter "AFC") and ADEM have a Memorandum of Agreement (hereinafter "MOA") providing for complaints relative to silvicultural practices to be initially investigated by AFC staff. This investigation can include Site visits, consultations, and best management practices (hereinafter "BMP") monitoring reports to inform the Operator of voluntary actions that should be taken in order to correct any BMP deficiencies identified. Should voluntary actions recommended by AFC, including the implementation of effective BMPs, not be accomplished and maintained by the Operator in a timely manner, then AFC, by agreement with ADEM, refers the complaint to ADEM for possible enforcement action.

5. AFC conducts compliance assistance inspections at timber harvesting sites as part of a cooperative effort to ensure timely, voluntary implementation of effective BMPs according to *Alabama's Best Management Practices For Forestry (1993)* document, to address potential water quality impacts that can result from significant deficiencies with the implementation of effective forestry BMPs designed to prevent/minimize discharges of sediment and other pollutants to waters of the state to the maximum extent practicable.

6. AFC initially inspected the Site on July 15, 2005, and identified BMP deficiencies that required correction. The Operator did not respond to AFC's recommended voluntary actions to implement and maintain effective forestry BMPs to prevent pollutant discharges.

7. On September 25, 2005, the complaint regarding the Site was forwarded to the Department by AFC due to the lack of voluntary compliance by the Operator to correct documented significant deficiencies.

8. The Site was inspected by ADEM on February 16, 2006. At the time of the inspection, tree harvesting activity had been completed. During the inspection, Department staff documented that effective forestry BMPs had not been implemented and maintained on skidder trails, haul roads and loading areas, and at stream crossing, resulting in unpermitted, discharges of pollutants to waters of the State. A Notice of Violation (hereinafter "NOV") dated March 6, 2006, was sent by certified mail and received by the Operator on March 18, 2006.

9. The March 6, 2006, NOV required timely actions to be performed by the Operator that included submission of:

(1) a plan for the stabilization and/or removal of sediment/debris deposited offsite and in State waters. Removal of all trees, tops, and related logging slash and debris from the affected stream. During the removal, equipment is not allowed in the streambed and debris should be removed by hand or by machinery from the sides of the creek;

- (2) a detailed plan for the removal and/or permanent stabilization of the stream crossing and the removal of sediment deposited downstream as a result of the unstabilized stream crossing and borrow area adjacent to Thompson Branch;
- (3) a proposed, detailed compliance schedule, with all work to be completed no later than fifteen (15) days after receipt of the NOV unless extended in writing by the Department; and
- (4) a certification by an ADEM recognized Qualified Credentialed Professional (hereinafter "QCP") no later than twenty (20) days after receipt of the NOV unless extended in writing by the Department, that all deficiencies have been corrected and full compliance with ADEM requirements has been achieved.

10. As of August 1, 2006, the Operator has not submitted certification to the Department as required by the March 6, 2006, NOV.

11. On August 30, 2006, the Department conducted an inspection of the Facility. During the inspection, Department staff documented that effective forestry BMPs still had not been implemented and maintained nor had the violations noted at during the previous inspection been corrected.

12. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) upon the environment; such person's history of previous violation(s); and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100) or exceed twenty-five thousand dollars (\$25,000) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000). 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(s): The Operator did not ensure that effective BMPs were fully implemented and maintained resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. While the noted violation(s) caused harm, the noted violation(s) did not cause irreparable harm to the environment.

B. THE STANDARD OF CARE: The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator realized an economic benefit as a result of the Operator's failure to comply with applicable regulatory requirements and non-response to the noted violation(s).

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(s) UPON THE ENVIRONMENT: The Operator took little or no action to minimize or mitigate the effects of the noted violation(s) upon the environment.

E. HISTORY OF PREVIOUS VIOLATION(s): The Operator does not have a history of previous violation(s).

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

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (1997 Rplc. Vol. and 2006 Cum. Supp.), it is hereby ORDERED:

A. That, within forty-five (45) days of receipt of this Order, the Operator shall pay to the Department a civil penalty in the amount of Ten Thousand dollars (\$10,000) for the violations cited herein. Said penalty 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
PO Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, the Operator shall fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater leaving the Site, prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State, and ensure full compliance with the requirements of ADEM Admin. Code ch. 335-6-12.

C. That the Operator shall, immediately upon receipt of this Order and continuing thereafter, ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES registration limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator.

D. That, unless relieved of this requirement in writing by the Department:

1. all inspections/evaluations shall be performed by a Professional Forester licensed in the State of Alabama (hereinafter "RF") or other QCP acceptable to the Department;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of, and shall be certified by, a RF/QCP;
3. all applications, plans, and information shall be certified by a RF/QCP;
4. all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a RF/QCP; and
5. all applications, plans, reports, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her RF or QCP designation, how the inspection/work was conducted, and the results of the inspection/work.

Within seven (7) days of the receipt of any written comments from the Department, the Operator shall modify any application, plan, information, report, or other submittal, or

submit additional information/clarification to the Department to address any comments made by the Department in writing.

E. That, within five (5) days of receipt of this Order, the Operator shall have a comprehensive inspection performed of the Site, offsite conveyances, and affected State waters.

F. That, within ten (10) days of receipt of this Order, the Operator shall have a comprehensive inspection of the Site conducted.

G. That, within twenty (20) days of receipt of this Order, the Operator shall submit to the Department a comprehensive corrective action plan for the Site prepared by the RF or QCP that conducted the Site inspection and signed by the Operator. The plan must meet or exceed the practices described in *Alabama's Best Management Practices For Forestry (1993)* document. Within five (5) days of receipt of any comments from the Department, the Operator shall modify the plan consistent with any comments made by the Department in writing.

H. That, within thirty (30) days of receipt of this Order, the Operator shall fully implement the ADEM accepted plan, correct all deficiencies, achieve continuing compliance with the AWPCA, and prevent unpermitted discharges of pollutants to waters of the State at the Site.

I. That, within thirty-five (35) days of receipt of this Order, the Operator shall submit to the Department certification signed by the Operator and by the RF or QCP that prepared the plan, that the corrective action plan has been implemented, all

deficiencies identified at the Site have been corrected, and full compliance with ADEM requirements has been achieved.

J. That, within forty-five (45) days of receipt of this Order, the Operator shall have a comprehensive inspection conducted by either a RF or QCP at other properties/sites (hereinafter "Properties") where the Operator has conducted timber harvesting operations in the twelve (12) months preceding the effective date of this Order, or alternatively, submit records documenting inspections conducted by a RF or QCP in the twelve (12) months preceding the effective date of this Order certifying that BMPs were implemented and maintained at these Properties.

K. That, within sixty-five (65) days of receipt of this Order, a comprehensive report shall be submitted to the Department certifying that all applicable BMPs as described in *Alabama's Best Management Practices For Forestry (1993)* document have been fully implemented and maintained at the other timber harvesting Properties. The report shall be signed by the Operator and certified by the RF or QCP that conducted the inspections.

L. That for any Properties that cannot be certified by the RF or QCP as having implemented and maintained the appropriate BMPs as described above, a comprehensive corrective action plan shall be prepared and submitted as part of the report. Certification by the RF or QCP that corrective actions have been implemented at these Properties shall be submitted to the Department within ninety (90) days of the effective date of this Order and shall be signed by the Operator.

M. That, should the Operator be unable to meet a deadline set forth herein, the Operator may request a modification of said deadline if the delay is due to a *Force Majeure*. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Operator, including the Operator's 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 Operator) and which delays or prevents performance by a date required by the 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 (10) working days prior to the original required 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 Operator, 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 the Department is not obligated to do so.

N. Should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with

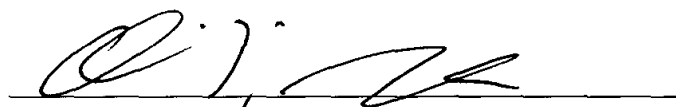
federal or State law and, therefore, unenforceable, the remaining provisions herein shall remain in full force and effect.

O. Except as otherwise 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 Operator of the Operator's obligations to comply in the future with any permit coverage.

P. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

Q. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 19th day of June, 2007.

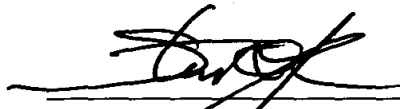

Onis "Trey" Glenn, III, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Steven O. Jenkins, do hereby certify that I have served the executed Administrative Order 07-131-MNPS upon the person listed below by sending the same, postage paid, through the United States Mail certified mail receipt# 7005 1820 003 1876 8897, with instructions to forward and return receipt, to:

Vernon Green
743 Davis Road
Hamilton, AL 35570

DONE this 19th day of June, 2007.



Steven O. Jenkins
Chief, Field Operations Division
Alabama Department of Environmental Management