

ONIS "TREY" GLENN, III  
DIRECTOR



BOB RILEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700  
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June 3, 2008

**CERTIFIED MAIL 7007 0710 0001 6204 0564**  
**RETURN RECEIPT REQUESTED**

Mr. Dudley Dickerson  
President  
Enviro Management Club  
232 Oxmoor Circle Suite 1004  
Birmingham, Alabama 35209

RE: Consent Order No. 08-163-CWP  
NPDES Permit AL0052281  
Harbortown Townhomes WWTP  
St. Clair County, Alabama

Dear Mr. Dickerson:

Please find enclosed ADEM Consent Order No. 08-163-CWP which requires you to take certain actions at Harbortown Townhomes WWTP in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of the Enviro Management Club and the Department. Please note that the assessed civil penalty is due within 45 days.

If you have any questions, please do not hesitate to contact Ms. Stephanie Ammons at (334) 274-4151.

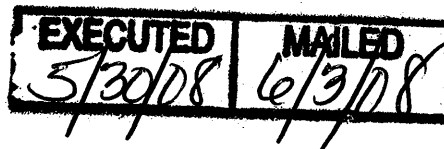
Sincerely,

James E. McIndoe, Chief  
Water Division

JEM/sba

Enclosures

cc: Vernon H. Crockett, ADEM - Water Division  
Antoinette Jones, ADEM - Office of General Counsel  
ADEM - Public Affairs Office  
Alfreda Freeman, EPA



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: )

**Enviro Management Company** )

CONSENT ORDER  
NO. 08-163-CWP

**Harbortown Townhomes WWTP** )  
**Cropwell (St. Clair County), AL** )

**NPDES Permit No. AL0052281** )

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Enviro Management Company (hereinafter the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 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 Harbortown Townhomes wastewater treatment plant (hereinafter "WWTP") located on Fraim Drive, Cropwell, in St. Clair County, Alabama. The WWTP discharges pollutants from a point source into Cropwell Branch, a water of the state.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 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 to 22-22-14 (2006 Rplc. Vol.).

4. The Department issued a National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0052281 to the Permittee on June 21, 2001 authorizing the discharge of pollutants from the Harbortown Townhomes WWTP to the Cropwell Branch. 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 Department received the Permittee's application for the NPDES Permit renewal on February 1, 2006, prior to the July 31, 2006, expiration date of the permit.

6. As set forth in ADEM Administrative Code R. 335-6-6-.06, the terms and conditions of the expiring permit are thus automatically extended pending issuance of a new permit.

7. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants from such point source into the aforementioned Cropwell Branch in violation of the limits imposed by the Permit. The months the violations occurred along with the parameters violated are listed in Attachment 1.

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

9. 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***

10. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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 and monthly average permit limitations for Total Suspended Solids

(hereinafter "TSS"), total ammonia-nitrogen (hereinafter "NH<sub>3</sub>-N") and total kjeldahl nitrogen (hereinafter "TKN"). Violations also consisted of exceeding the imposed daily maximum limit Total Residual Chlorine, the monthly minimum limit for percent removal of TSS, Five day Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD<sub>5</sub>") and the monthly geometric mean of fecal coliform. 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.

B. THE STANDARD OF CARE: The Permittee failed to exercise reasonable care in the maintenance, repair, and operation of its wastewater treatment plant and collection system.

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 in making the necessary repairs or maintenance to the wastewater treatment and collection systems.

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: There has been a history of ongoing violations, as evident by the discharge monitoring reports.

F. THE ABILITY TO PAY: Based on available information to the Department, the Permittee has not alleged inability to pay.

G. OTHER FACTORS: The Department met with the Permittee on August 23, 2007 to discuss a draft version of this Consent Order. Based upon that meeting, the

Department made minor editorial changes. In addition, the Department lowered the maximum stipulated penalty amount from \$24,000 to \$12,000, based on the limited service population connected to the Harbortown Homes WWTP. The assessed civil penalty has also been lowered from an initial penalty of \$33,200 to reflect the revised fewer number of effluent violations occurring during the two year period addressed by the revised Order. 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 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 pay to the Department a civil penalty in the amount of \$18,600.00 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 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 shall include a schedule for implementation (i.e., Compliance Plan) identifying the potential causes of noncompliance and must present the results of an investigation into the changes necessary for the Permittee to implement in order to achieve compliance with NPDES Permit Number AL0052281. 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 to the Department not 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 approved schedule presented in the Compliance Plan and as required by this Order.

D. The Permittee agrees to prepare and submit Semi-Annual Progress Reports describing in detail the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan. Such reports shall be submitted on or before January 31<sup>st</sup> and July 31<sup>st</sup> following the effective date of this Consent Order for each year that the Permittee's performance 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 the Permittee's ability to comply with any remaining requirements of this Consent Order.

E. The Permittee agrees to comply with the Total Ammonia Nitrogen, TSS, TKN, TRC, FC, CBOD, DO, CBOD5 and TSS percent removals limitations imposed by NPDES Permit Number AL0052281 not later than 365 days after the date of entry of this Consent Order. 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.

F. 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 AL0052281, the Permittee shall pay to the Department the sum of \$200.00 for



each and every daily maximum, daily minimum, weekly average, and minimum percent removal violation and \$400.00 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 outlined herein or for failure to meet any milestone date presented in the approved Compliance Plan or any other 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 Permittee.

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 365 days after the effective date of this Consent Order, then the Department shall be free to issue additional orders or to 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.

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 ninety days after 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 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, compliance with the Permit, 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 ten 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.

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 Permittee 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.

ENVIRO MANAGEMENT  
COMPANY

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By:   
Its: President  
Date: 3-19-08

By:   
Its: Deputy Director  
Date: 5/30/08

# Attachment 1

AL0052281 HARBORTOWN TOWNHOMES WWTP

DMR Value Limit Units Averaging Time  
Outfall ID: 0011

## March, 2006

<u>NITROGEN AMMONIA TOTAL N</u>			
1	1.41	1	mg/l
2	1.84	1.5	mg/l
<u>SOLIDS SUSP PERCENT</u>			
3	44.1	85	Percent
<u>TSS</u>			
4	42.5	30	mg/l
5	83	45	mg/l

## April, 2006

<u>CHLORINE TOTAL RESIDUAL</u>			
6	0.4	0.01	mg/l
Daily Maximum			
<u>TKN</u>			
7	5.04	5	mg/l
Monthly Average			

## May, 2006

<u>NITROGEN AMMONIA TOTAL N</u>			
8	4.66	1	mg/l
Monthly Average			
9	4.87	1.5	mg/l
Weekly Average			
<u>TKN</u>			
10	6.09	5	mg/l
Monthly Average			
<u>TSS</u>			
11	35	30	mg/l
Monthly Average			

## June, 2006

<u>NITROGEN AMMONIA TOTAL N</u>			
12	2.01	1	mg/l
Monthly Average			
13	3.92	1.5	mg/l
Weekly Average			

## July, 2006

<u>FECAL COLIFORM</u>			
14	305	200	#/100 ml
Monthly Geo Mean			
<u>NITROGEN AMMONIA TOTAL N</u>			
15	5.78	1	mg/l
Monthly Average			
16	10.6	1.5	mg/l
Weekly Average			
<u>SOLIDS SUSP PERCENT</u>			
17	46.3	85	Percent
Monthly Average			
<u>TKN</u>			
18	6.63	5	mg/l
Monthly Average			
19	11.3	7.5	mg/l
Weekly Average			

## August, 2006

<u>BOD CARBONACEOUS 5DAY 20C</u>			
20	1.73	1.25	lbs/day
Monthly Average			
21	2.68	1.87	lbs/day
Weekly Average			
<u>CBOD 5 Day Percent Removal</u>			
22	77.4	85	Percent
Monthly Average			
<u>FECAL COLIFORM</u>			
23	226	200	#/100 ml
Monthly Geo Mean			

## NITROGEN AMMONIA TOTAL N

24	0.22	0.08	lbs/day	Monthly Average
25	0.41	0.12	lbs/day	Weekly Average
26	1.28	1	mg/l	Monthly Average
27	2.38	1.5	mg/l	Weekly Average
<u>TKN</u>				
28	1.17	0.41	lbs/day	Monthly Average
29	2.17	0.62	lbs/day	Weekly Average
30	6.75	5	mg/l	Monthly Average
31	12.5	7.5	mg/l	Weekly Average
<u>TSS</u>				
32	13.91	2.5	lbs/day	Monthly Average
33	25.91	3.75	lbs/day	Weekly Average
34	80	30	mg/l	Monthly Average
35	149	45	mg/l	Weekly Average

## September, 2006

<u>SOLIDS SUSP PERCENT</u>			
36	78.6	85	Percent
Monthly Average			

## October, 2006

<u>NITROGEN AMMONIA TOTAL N</u>			
37	1.66	1.5	mg/l
Weekly Average			
<u>SOLIDS SUSP PERCENT</u>			
38	74.1	85	Percent
Monthly Average			

## December, 2006

<u>BOD CARBONACEOUS 5DAY 20C</u>			
39	34.42	15	mg/l
Monthly Average			
40	66.2	22.5	mg/l
Weekly Average			

<u>CBOD 5 Day Percent Removal</u>			
41	76.7	85	Percent
Monthly Average			

## February, 2007

<u>NITROGEN AMMONIA TOTAL N</u>			
42	0.11	0.08	lbs/day
Monthly Average			
43	0.22	0.12	lbs/day
Weekly Average			
44	2.29	1	mg/l
Monthly Average			
45	4.48	1.5	mg/l
Weekly Average			
<u>TKN</u>			
46	5.39	5	mg/l
Monthly Average			
47	8.96	7.5	mg/l
Weekly Average			

## March, 2007

<u>FECAL COLIFORM</u>			
48	226	200	#/100 ml
Monthly Geo Mean			

<u>NITROGEN AMMONIA TOTAL N</u>			
49	1.68	1.5	mg/l
Weekly Average			

## April, 2007

<u>CHLORINE TOTAL RESIDUAL</u>			
50	0.03	0.01	mg/l
Daily Maximum			

## May, 2007

	DMR Value	Limit	Units	Averaging Time
	<u>CHLORINE TOTAL RESIDUAL</u>			
51	0.03	0.01	mg/l	Daily Maximum
	<u>NITROGEN AMMONIA TOTAL N</u>			
52	1.96	1.5	mg/l	Weekly Average

July, 2007

	<u>NITROGEN AMMONIA TOTAL N</u>			
53	1.82	1.5	mg/l	Weekly Average

August, 2007

	<u>NITROGEN AMMONIA TOTAL N</u>			
54	0.16	0.12	lbs/day	Weekly Average
55	7.18	1.5	mg/l	Weekly Average
	<u>PH</u>			
56	8.8	8.5	SU	Daily Maximum
	<u>TKN</u>			
57	7.23	5	mg/l	Monthly Average
58	12.5	7.5	mg/l	Weekly Average