

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	Proposed
)	
South Gate Estates Mobile Home Park)	CONSENT ORDER No.
Pelham, Shelby County, Alabama)	19-XXX-CDW
)	
PWSID No. AL0001797)	
Permit No. 2019-512)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department") and the South Gate Mobile Home Park (hereinafter "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53, as amended (hereinafter "ASDWA"); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code") promulgated pursuant thereto.

DEPARTMENT'S CONTENTIONS

1. The Permittee operates a "public water system" as defined at Ala. Code § 22-23-31, as amended, located in Pelham, Shelby County, Alabama. The Permittee's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31, as amended.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. Additionally, pursuant to Ala. Code § 22-23-49(2), as amended, the Department is authorized to administer and enforce the provisions of the ASDWA.

4. On January 22, 2013, the Department issued Water Supply Permit No. 2013-510 (“Permit”) to the Permittee, which authorizes the operation of its “public water system” under certain terms, limitations, and conditions. The Permit expiration date was January 31, 2019.

5. Meritus Communities, LLC is a Limited Liability Company formed under the laws of the State of Delaware. Meritus Communities, LLC acquired South Gate Estates Mobile Home Park from Matrix South, LLC, the original owner/operator and holder of Water Supply Permit No. 2013-510 on August 5, 2016. Meritus Communities, LLC is the manager for Swoop MHP JC LLC that wholly owns "FSI Green Park South Property, LLC", a foreign limited liability company registered and qualified to do business in Alabama. FSI Green Park South Property, LLC is the legal entity operating the South Gate Estates Mobile Home Park in Shelby County, Alabama.

6. ADEM Admin. Code r. 335-7-4-.07(2) states that “water systems must submit a satisfactorily completed permit application with the appropriate permit fee to the Department requesting permit renewal no less than 180 days prior to permit expiration.” The Permittee failed to submit a permit renewal application with fee by the application deadline. The Permittee's renewal application was due to the Department by August 4, 2018.

7. ADEM Admin. Code r. 335-7-4-.13 states that “if the water system has submitted a timely and complete application for reissuance, the system has technical, managerial and financial capacity, is in complete compliance with all regulations and the delay in the permit issuance has not been caused by the actions of the water system, then the terms and conditions of an expiring facility permit are automatically extended pending issuance of a new facility permit.” The Permittee's renewal application was due to the Department by August 4, 2018. The Permittee's application is dated April 2, 2019, and was received by the Water Division at ADEM on April 5, 2019. The Permittee's failure to submit a timely and complete application, caused Permit 2013-510 to expire on January 31, 2019.

8. At the time the renewal application package was received by the Water Division of ADEM on April 5, 2019, the Permit had been expired for sixty-four (64) days and the permit renewal application submittal was 244 days past due.

9. The Department processed the application and issued Permit 2019-512 on May 1, 2019, less than thirty (30) days after receiving the complete permit renewal application.

10. The Department issued a Notice of Violation (NOV) to the Permittee on April 3, 2019, via Certified U.S. Mail. The NOV cited the Permittee for failure to submit a satisfactory and complete renewal application by the required deadline and for operating without a valid Water Supply Permit beginning February 1, 2019, and continuing until Permit 2019-512 was issued on May 1, 2019. The NOV requested a response no later than April 18, 2019. The response was received by the Department on April 17, 2019.

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

PERMITTEE'S CONTENTIONS

1. The Permittee submitted a complete and satisfactory permit renewal application package to the Department via Federal Express on April 3, 2019.

2. The Department did not process the permit application with appropriate fee until April 30, 2019.

3. The Department issued Permit 2019-512 on May 1, 2019.

4. The Permittee has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein.

AGREEMENT

12. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty assessed in an order issued by the Department, 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 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 upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not 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 VIOLATIONS:** The Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to the public. The Permittee failed to submit a timely permit renewal application and fee, and operated a public water system without a valid permit from February 1, 2019 through April 30, 2019. The Department considers operating a public water system without a valid permit to be a serious violation.

B. **THE STANDARD OF CARE:** The Permittee could have easily avoided the violations by submitting the application renewal in a timely fashion, 180 days before the current permit, PSW 2013 - 510, was to expire.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT:** The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The current Permittee, does not have a history of violations for this facility other than those cited in this Order.

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

G. The civil penalty is summarized in Attachment A.

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., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter "the Parties") agree to enter into this Consent Order with the following terms:

A. The Permittee shall pay to the Department a civil penalty of \$4,088.00 (Four thousand, eighty-eight and no/100ths dollars) no later than forty-five days after issuance of this Consent Order. 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

Failure to pay the civil penalty pursuant to this Consent Order 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 shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until permit expiration.

C. 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.

D. Subject to the terms agreed to by the Parties to this Consent Order 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.

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

F. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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 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.

G. 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 public water system 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.

H. 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.

I. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

J. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

K. 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.

L. Any modifications of this Consent Order must be agreed to in writing signed by both Parties.

M. Except as 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.

South Gate Estates
Mobile Home Park

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:



Jeffrey S. Davidson
President/CEO

Lance R. LeFleur
Director

Date: 9/10/19

Date: _____

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B. THE STANDARD OF CARE: The Permittee could have easily avoided the violations by submitting the application renewal in a timely fashion, 180 days before the current permit, PSW 2013 - 510, was to expire.

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D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The current Permittee, does not have a history of violations for this facility other than those cited in this Order.

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

G. The civil penalty is summarized in Attachment A.

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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., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter "the Parties") agree to enter into this Consent Order with the following terms:

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Office of General Counsel
Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463

Failure to pay the civil penalty pursuant to this Consent Order 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 shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until permit expiration.

C. 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.

D. Subject to the terms agreed to by the Parties to this Consent Order 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.

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

F. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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*

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G. 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 public water system 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.

H. 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.

I. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

J. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

K. 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.

L. Any modifications of this Consent Order must be agreed to in writing signed by both Parties.

M. Except as 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.

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Mobile Home Park

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:



Jeffrey S. Davidson
President/CEO

Lance R. LeFleur
Director

Date: 9/10/19

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