

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

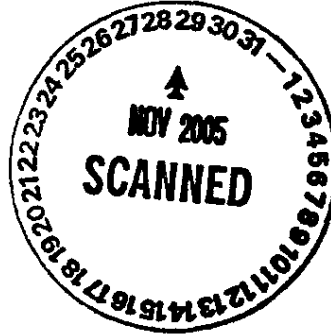
BOB RILEY
GOVERNOR

November 28, 2005

CERTIFIED MAIL
7004 2510 0001 3989 0351

LARRY WOOD
LAR-DAN INC
1025 LEE ROAD 197
PHENIX CITY ALABAMA 36870

RE: CONSENT ORDER 06-011-CMNPS
Misty Forest Subdivision
Russell County NPDES ALR160712
Russell County Road 165 in Phenix City



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

Dear Mr. Wood:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Gerald Martin, Construction Unit, Mining & Nonpoint Source Section**, by email at gfm@adem.state.al.us or by phone at (334) 394-4317.

Sincerely,

Steven G. Jenkins, Chief
Field Operations Division

soj/gfm

E-copy: Water Management Division, EPA Region IV
Office of Public Affairs, ADEM

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

LAR-DAN, INC.)

MISTY FOREST SUBDIVISION)

T16N, R30E, S8, PHENIX CITY,)

RUSSELL COUNTY, ALABAMA)

NPDES ALR160712)

CONSENT ORDER 06-011-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§ 22-22A-1 through 22-22A-16 (1975), as amended, and the Alabama Water Pollution Control Act (AWPCA), Ala. Code, §§ 22-22-1 through 22-22-14 (1975), as amended, the ADEM Administrative Code of Regulations (ADEM Admin. Code R.) promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (NPDES) administered by the Alabama Department of Environmental Management ("Department" or "ADEM") and approved by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act (FWPCA) §402, 33 U.S.C. § 1342, as amended, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. LAR-DAN, Inc. (hereinafter "Operator"), is an Alabama Corporation constructing the subdivision of Misty Forest (hereinafter "Facility") located in T16N, R30E, S8, on Russell County Road 165 off United States Highway 431, Phenix City,

water of the State, classified for Fish and Wildlife, Public Water Supply, and Swimming and Other Whole Body Water-Contact Sports.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code, § 22-22A-1 through 22-22A-16 (1975), as amended.

3. The Department is authorized to administer and enforce the provisions of the AWPCA. In addition, pursuant to Ala. Code, § 22-22A-4(n) (1975), as amended, the Department is the State agency responsible for the promulgation and enforcement of water pollution control regulations consistent with the FWPCA.

4. On October 16, 2003, the Operator submitted a Notice of Registration (NOR) requesting NPDES coverage under ADEM Admin. Code Ch. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted Registration ALHA03656 to the Operator on October 21, 2003. Registration ALHA03656 expires on October 20, 2005.

5. Pursuant to ADEM Admin. Code R. 335-6-12-.05(2), all NPDES construction sites/activities in Alabama are required to fully implement and regularly maintain effective Best Management Practices (BMPs) to the maximum extent practicable, and in accordance with the Operator's Construction Best Management Practices Plan (CBMPP).

6. During inspections of the Facility on February 23, 2004; October 20, 2004; and April 28, 2005, the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to Martin Lake.

7. Pursuant to ADEM Admin. Code R. 335-6-12-.15(4), the Operator is required to maintain and submit to the Department upon request certain data, records, reports, and other information for the Facility. Pursuant to ADEM Admin. Code R. 335-6-12-.26(4), the Operator is required to record and maintain detailed records of precipitation that has occurred at the Facility. Pursuant to ADEM Admin. Code R. 335-6-12-.28(4), the Operator is required to have comprehensive inspections of the Facility performed on a regular schedule and in response to qualifying precipitation event(s).

8. Pursuant to ADEM Admin. Code R. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

9. During the February 23, 2004; October 20, 2004; and April 28, 2005, inspections by the Department, significant accumulations of sediment resulting from discharges at the Facility were observed offsite and in Martin Lake.

10. On March 31, 2004, a Notice of Violation (NOV) was sent by the Department to the Operator as a result of the February 23, 2004, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and requested the Operator to submit to the Department a copy of the CBMPP and copies of inspection report(s) for the Facility within ten (10) days of receipt of the NOV. A copy of the CBMPP and copies of the inspection reports were received by the Department on April 14, 2004.

11. The March 31, 2004, NOV requested the Operator to submit certification by a Qualified Credentialed Professional (QCP) that all deficiencies at the Facility had been

corrected within fifteen (15) days of receipt of the NOV. Certification was received by the Department on April 14, 2004.

12. The Operator 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 AWPCA, the Operator has agreed to the terms of this Consent Order.

13. 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 Ala. Code, §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (1975), as amended, and with the consent of the Operator, it is hereby ORDERED:

A. That, not later than forty-five (45) days after the effective date of this Consent Order, the Operator shall pay to the Department a civil penalty in the amount of Five-Thousand Dollars (\$5,000) for the violations cited herein. In determining the penalty amount set forth herein, the Department considered the statutorily prescribed factors set forth at Ala. Code, § 22-22A-5(18) (c) (1975), as amended.

B. 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. That the Operator shall, immediately upon the effective date of this Consent Order and continuing thereafter, ensure immediate and future compliance with the AWPCA, applicable ADEM rules and regulations, and all NPDES registration limitations, terms, and conditions for all registered/unregistered sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order.

D. That, immediately upon the effective date of this Consent Order, the Operator shall fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable noncompliant discharges and/or unpermitted discharges of pollutants to waters of the State.

E. That, unless relieved of this requirement in writing by the Department, (1) all inspections/evaluations shall be performed by a Professional Engineer licensed to practice in the State of Alabama (PE), a Department recognized Qualified Credentialed Professional (QCP), a qualified person under the direct supervision of a PE/QCP, or by a Qualified Credentialed Inspector (QCI); (2) BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of, and shall be certified by, a PE/QCP; (3) all applications, plans, and information shall be certified by a PE/QCP; (4) all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a PE/QCP; and (5) all applications, plans, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her PE, QCP, or QCI

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

F. That, within five (5) days after the effective date of this Consent Order, the Operator shall have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

G. That, within ten (10) days after the effective date of this Consent Order, the Operator shall submit to the Department a Construction Best Management Practices Plan (CBMPP) detailing effective BMPs to be implemented to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater from leaving the Facility, and to ensure full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12.

H. That, within ten (10) days after the effective date of this Consent Order the Operator shall submit to the Department a detailed plan for the remediation and/or removal of sediment and other pollutants from the Facility deposited offsite and in State waters.

I. That, within twenty (20) days after the effective date of this Consent Order, the Operator shall implement effective BMPs, implement the plans required in paragraphs G and H above, and correct all deficiencies at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

J. That, within twenty-five (25) days after the effective date of this Consent Order, the Operator shall submit to the Department a certification that effective BMPs have been

implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin. Code Ch 335-6-12 has been achieved at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

K. 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.

L. 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.

M. That the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

N. That, for purposes of this Consent Order only, the Operator 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 Operator also agrees that, in any action brought by the Department to compel compliance with the terms of this Consent Order, the Operator shall be limited to the defenses of *Force Majeure*, compliance with this Consent Order, 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 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 be beyond the reasonable control of the Operator) 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 ten (10) 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 Operator, the Department may extend the time as justified by the specific circumstances. The Department may also grant any other additional time extension as justified by the specific circumstances, but is not obligated to do so.

O. 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 Operator 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.

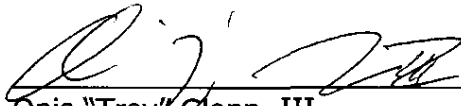
P. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

HARBOR POINTE, LLC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)


Onis "Trey" Glenn, III
Director


(Print Name of Authorized Representative)

Date Signed: 11/18/05


Title

Date Signed: 6/8/05