

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

CHICAGO DEER RIVER PROPERTIES LLC)

THEODORE, ALABAMA)

NPDES GENERAL PERMIT # ALG610000)

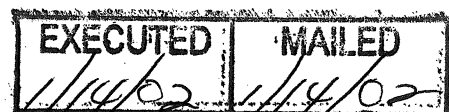
AUTHORIZATION #ALR105806)

ORDER NO. 02-055-CMNPS/CCA

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to -16, Code of Alabama 1975, as amended, the Alabama Water Pollution Control Act, §§ 22-22-1 to -14, Code of Alabama 1975, as amended, the Coastal Area Management Act, Code of Alabama (1975), §§ 9-7-10 through 9-7-20, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System administered by the Alabama Department of Environmental Management (hereinafter, "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, and without the adjudication of any issues of fact or law and with the consent of Chicago Deer River Properties, LLC, the Department makes the following FINDINGS:

1. Chicago Deer River Properties (hereinafter "the Operator" or "the Permittee") operates construction and other land disturbing activity, specifically the construction of a marine terminal for commercial use. Also involved in initial permit



processing regarding the above mentioned activity was an entity known as Deer River Forest Products Corp. (Both entities are hereafter referred to collectively or singly as "Operator"). The development is located at the end of Claudia Lane (in Township 6 South, Range 1 West, Sections 17, Mobile County), Theodore, Alabama ("the site"). The development contains more than five acres in the coastal area. If the Operator's construction activities are not properly managed, storm water runoff can discharge pollutants, such as sediments, into the waters of this State.

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

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, the Department is the state water pollution control agency for the purposes of the federal Clean Water Act, 33 U.S.C. §§ 1251 through 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended. Additionally, Code of Alabama (1975), § 22-22A-4(j) recognizes the Department as the state agency responsible for the promulgation and enforcement of coastal area management regulations in accordance with the provisions of the Coastal Area Management Act, *supra*.

4. ADEM Administrative Code R 335-6-6-.03 (b) states:

No person, required to apply for a stormwater discharge permit by 40 CFR 122.26 (1994), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit or coverage under a valid General NPDES Permit. New Discharges shall obtain a valid NPDES permit or coverage under a valid General Permit prior to conducting any activity for which application for a stormwater discharge permit is required by 40 CFR 122.26 (1994).

5. Part II., A., 3., of NPDES General Permit #ALG610000 states that the

owner/operator is required to apply for and obtain a NPDES Individual or General Permit prior to conducting any non-exempt construction or land disturbance that exceeds five acres or is part of a common plan for development or sale which might eventually exceed five acres. The regulated disturbance includes pre-construction activities performed in advance or in support of construction such as logging, clearing, dewatering, etc.

6. An inspection of the site on August 23, 2000 and December 28, 2000, revealed regulated activities were on going on the site. Permit coverage for the site was not issued until April 13, 2001(ALR105806).

7. Part II., B., 3., of NPDES General Permit #ALG610000 states that the Permittee shall prepare, implement, and maintain a SPCC Plan as a separate document or as part of the BMP plan for all onsite fuel, chemical, or pollutant storage tanks.

8. An August 7, 2001 site inspection revealed a fuel tank totaling 1000 gallons. There was no SPCC plan for fuel storage.

9. On August 4, 1995 the Department issued Coastal Management permit MSC-95-07 to Deer River Forest Products Corp., hereinafter encompassed within the term "Operator", subject to specific and general terms and conditions. General Condition numbered 3 requires, in the pertinent part, that "the permittee shall provide the Department written notice of the start and completion of construction within thirty (30) days of the beginning and ending of construction, respectively." Specific Condition numbered 4 requires that the mitigation site be monitored quarterly during the first year, semi-annually the second year and annually during years 3 through 5, with reports being submitted to the Department following each inspection.

10. The Department did not receive the required notice prior to commencement of construction, nor did the Department receive the required quarterly and semi-annual inspection reports during the first two monitoring years.

11. On February 5, 2001 the Department issued Coastal Management permit MSC-01-05 to Chicago Deer River Properties LLC, hereinafter sometimes referred to as "Operator", subject to specific and general terms and conditions. General Condition numbered 5 requires, in the pertinent part, that "the permittee shall provide the Department written notice of the start and completion of construction within thirty (30) days of the beginning and ending of construction, respectively." Specific Condition numbered 3 requires that the Department be notified of the commencement of the planting of the mitigation area.

12. The Department did not receive the required notice prior to commencement of construction, nor did the Department receive the required notice prior to commencement of the planting of the mitigation area.

13. The Operator denies the allegations and findings herein, but, in a continuing effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, and the Coastal Area Management Act, the Operator has agreed to the terms of this Consent Order.

14. The Department has agreed to the terms of this Consent Order in order to resolve the violations alleged in this 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 upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10) and 22-22-9, Code of Alabama 1975, as amended, and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, and with the consent of the parties, it is hereby ORDERED:

A. That, not later than thirty (30) days after the effective date of this Consent Order, the Operator shall pay to the Department a civil penalty of \$7,500 for the violations cited herein.

B. 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 that are alleged in this Consent Order.

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

D. 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 Agreement, the Operator 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 Operator, 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 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 five (5) 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 for good cause shown but is not obligated to do so.


E. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances set forth in this Consent Order. Should additional facts and circumstances be discovered in the future concerning the Operator which would constitute possible violations not addressed in this Consent Order, then such 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 Operator shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent

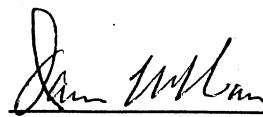
Order if further Orders, litigation or other enforcement action address matters not raised in this Consent Order.

F. That this Consent Order shall apply to and be binding upon the Alabama Department of Environmental Management, Deer River Forest Products Corp., and Chicago Deer River Properties, LLC as well as 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. Additionally, the signatory for Chicago Deer River Properties LLC specifically acknowledges their representation of Deer River Forest Products Corp. and their authorization to enter into this Consent Order on behalf of both Chicago Deer River Properties LLC and Deer River Forest Products Corp.

G. 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 parties do hereby waive any hearing on the terms and conditions of same.

**CHICAGO DEER RIVER PROPERTIES ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**


By: MICHAEL G. MILLER
Its: Manager
Date: 1/8/02


James W. Warr
Director
Date: 14 JAN 2002