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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

DIRECTOR

BOB RILEY

GOVERNOR

June 1, 2005

CERTIFIED MAIL

7004 1160 0006 6054 2127

MPM INVESTMENTS LLC

MALCOLM MCLEAN

1313 S COMMERCIAL DR SUITE 201A

FOLEY AL 36535

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: CONSENT ORDER 05-103-CMNPS

The Outdoor Center

Baldwin County

T7S, R4E, S33

NPDES ALHA01610

Dear Mr. McLean:

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 **Leslie Lassitter, Coastal Facility/Section, by email at lsl@adem.state.al.us or by phone at (251) 432-6533.**

Sincerely,

A handwritten signature in black ink, appearing to read "Steven O. Jenkins", is written over a horizontal line.

Steven O. Jenkins, Chief
Field Operations Division

soj/lsl

E-copy: Mobile Branch, ADEM

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

MPM INVESTMENTS LLC)
THE OUTDOOR CENTER)
FOLEY, T7S, R4E, S33)
BALDWIN COUNTY, ALABAMA)
NPDES ALHA01610)
_____)

CONSENT ORDER 05-103-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. MPM Investments, LLC (hereinafter "Operator"), is an Alabama Corporation constructing The Outdoor Center (hereinafter "Facility") located in T7S, R4E, S33, Foley, Baldwin County, Alabama.

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. 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 in accordance with the FWPCA. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. On March 13, 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 ALHA01610 to the Operator on March 13, 2003. Registration ALHA01610 expired on March 12, 2004.

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) that has been prepared by a qualified credentialed professional (QCP).

6. During inspections of the Facility on June 18, 2003, July 14, 2003, and January 26, 2004, 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 an unnamed tributary of Bon Secour River, a water of the State, classified as suitable for Fish & Wildlife.

7. Pursuant to ADEM Admin. Code Rs. 335-6-12-.26(5) and 335-6-10-.09, discharges from the Facility shall not cause turbidity downstream of the Facility to exceed upstream turbidity by 50 Nephelometric Units (NTUs), nor shall discharges from the Facility cause substantial visible contrast in instream turbidity.

8. Analyses of water samples collected by the Department on June 18, 2003, from an unnamed tributary of Bon Secour River which receives stormwater discharges from the Facility, indicated an upstream turbidity of 65 NTUs and a downstream turbidity of 150 NTUs, resulting in an increase of 85 NTUs. In addition, stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity downstream of the Facility.

9. Analyses of water samples collected by the Department on July 14, 2003, from an unnamed tributary of Bon Secour River, indicated an upstream turbidity of 38 NTUs and a downstream turbidity of 410 NTUs, resulting in an increase of 372 NTUs. In addition, stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity downstream of the Facility.

10. Analyses of water samples collected by the Department on January 26, 2004, from an unnamed tributary of Bon Secour River, indicated an upstream turbidity of 28 NTUs and a downstream turbidity of 520 NTUs, resulting in an increase of 492 NTUs. In addition, stormwater discharges from the Facility were causing substantial visible contrast in instream turbidity downstream of the Facility.

11. 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).

12. On June 19, 2003, a Warning Letter was sent to the operator as a result of the June 18, 2003, inspection. The Warning Letter notified the operator of deficiencies documented at the Facility.

13. On February 5, 2004, a Warning Letter was sent to the operator as a result of the January 26, 2004, inspection. The Warning Letter notified the operator of deficiencies documented at the Facility.

14. On March 4, 2004, a Request for Documents Letter was sent to the operator. The Letter requested the Operator to submit to the Department a copy of the CBMPP, precipitation records, and copies of inspection report(s) for the Facility within seven (7) days of receipt of the Letter. On March 15, 2004, the Operator requested, and on March 16, 2004, the Department granted an extension of the compliance deadline contained in the Letter until March 22, 2004, to provide additional time for the Operator to submit the requested documents. As of September 13, 2004, the requested information had not been submitted to the Department.

15. 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 consented to the terms of this Consent Order.

16. 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 ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator.

D. That, within one-hundred & twenty (120) days after the effective date of this Consent Order, the Operator shall provide for a minimum of five (5) employees to attend Qualified Credentialed Inspector (QCI) training conducted by a Department accepted QCI training provider. Within one-hundred & twenty-five (125) days after the effective date of this Consent Order, the Operator shall submit to the Department certification of successful completion of the QCI training by each employee.

E. That, immediately upon the effective date of this Consent Order and continuing thereafter, the Operator shall fully implement and maintain effective BMPs at all construction sites to prevent/minimize to the maximum extent practicable noncompliant discharges and/or unpermitted discharges of pollutants to waters of the State.

F. 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.

G. 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.

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

I. 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 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 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.

J. 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.

K. 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.

MPM INVESTMENTS LLC

M. P. McLean.
(Signature of Authorized Representative)

M. P. McLean
(Print Name of Authorized Representative)

Manager
Title

Date Signed: 2/22/05

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Onis "Trey" Glenn, III
Director

Date Signed: 5/27/05