

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

DIRECTOR

February 26, 2007

BOB RILEY

GOVERNOR

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

Mr. Eric Lansdon
Smiths Water and Sewer Authority
P.O. Box 727
Smith, Alabama 36877

RE: Smiths Water and Sewer Authority
Consent Order No. 07-066-CDW

Please find enclosed ADEM Consent Order No. 07-066-CDW which requires the Smiths Water and Sewer Authority to take certain actions in regard to alleged violations of the Safe Drinking Water Act. This Consent Order has been issued with the consent of the Smiths Water and Sewer Authority and the Department.

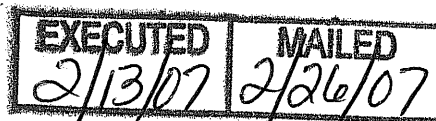
If you have any questions, please do not hesitate to contact me at (334) 271-7820.

Sincerely,



Dennis Harrison
Drinking Water Branch

Cc: Olivia H. Rowell, ADEM – General Counsel
James McIndoe, ADEM – Water Division
ADEM – Permits and Services Division
ADEM – Public Affairs Office



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Smiths Water and Sewer Authority)
Smith Station, Alabama)

CONSENT ORDER NO.
07-066-CDW

PWSID NO. 0000820)
Permit Number 2005-625)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and the Smiths Water and Sewer Authority (hereinafter, "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), as amended, the Alabama Safe Drinking Water Act, Ala. Code §§ 22-22-30 through 22-23-53 (1997 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter, (ADEM Admin. Code r.)) promulgated pursuant thereto, and the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26.

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



IN THE MATTER OF:)

Draft

Smiths Water and Sewer Authority)
Smith Station, Alabama)

CONSENT ORDER NO.
07-XXX-CDW

PWSID NO. 0000820)
Permit Number 2005-625)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "Department") and the Smiths Water and Sewer Authority (hereinafter, "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), as amended, the Alabama Safe Drinking Water Act, Ala. Code §§ 22-22-30 through 22-23-53 (1997 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter, (ADEM Admin. Code r.") promulgated pursuant thereto, and the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26.

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

2. The Permittee was issued Water Supply Permit No. 2005-625 by the Department which authorizes the operation of a "public water system" as defined at §22-23-31, Ala. Code (1997 Rplc. Vol.). The Permittee's public water system is a "Community Water System" as defined at §22-23-31, Ala. Code (1997 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (1997 Rplc. Vol.), 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 through 300j-26. Additionally, pursuant to Ala. Code § 22-23-49(2) (1997 Rplc. Vol.), the Department is authorized to administer and enforce the provisions of the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 through 22-23-53 (1997 Rplc. Vol.).

4. ADEM Admin. Code r. 335-7-14-.06(1) states that the Permittee shall deliver to the Department a copy of its Consumer Confidence Report (hereinafter, "CCR") and certification form no later than July 1 of each year, for the previous calendar year's water quality information.

5. The Permittee failed to deliver the calendar year 2005 CCR on or before July 1, 2006.

6. The Permittee consents to abide by the terms of the following Order, and reserves its right to contest the alleged violations as against the Department or any third party in any proceedings, except as provided in Ala. Code § 22-22A-7(7) (1997 Rplc. Vol.).

7. 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.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to achieve compliance with all the provisions of ADEM Admin. Code r. 335-7-14, and to submit its calendar year 2006 CCR and certification form so that they are received by the Department no later than July 1, 2007.

B. The Permittee shall include in its calendar year 2006 CCR the following language as a minimum:

The 2005 Consumer Confidence Report (CCR) was delivered to the Alabama Department of Environmental Management (ADEM) after July 1, 2006, which is a violation of ADEM Regulations. A Consent Order was entered into between this water system and ADEM to ensure future CCRs are delivered no later than July 1 of each year.

C. The Permittee shall pay to the Department a stipulated penalty of \$10,500 if the Permittee does not deliver the calendar year 2006 CCR or certification form to the Department by July 1, 2007. The Permittee agrees that payment of a stipulated penalty due for failure to submit the 2006 CCR or certification form by July 1, 2007 shall be due not later than the August 28, 2007. Notification to the Permittee by the Department of the assessment of the stipulated penalty is not required.

D. That 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

E. The Permittee agrees to comply with the terms, limitations, and conditions of the Water Supply Permit No. 2005-625 each and every day hereafter until such time as all requirements of this Consent Order are satisfied.

F. 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.

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

I. 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 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.

J. 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 facility 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.

K. 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.

L. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The Department and the Permittee agree that final approval and entry into this 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 Order.

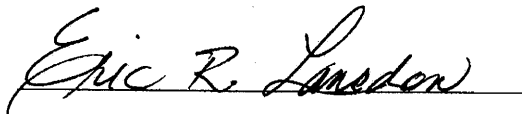
N. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

P. The Department and the Permittee agree that, except as set forth herein, this 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.

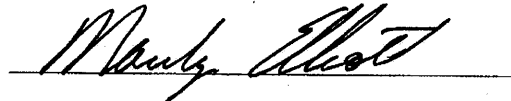
Executed in duplicate, with each part being an original.

SMITHS WATER AND SEWER
AUTHORITY



Authorized Representative
Smiths Water and Sewer Authority

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Onis "Trey" Glenn, III, Director
Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 271-7700

Date: 12-06-06

Date: 2-13-07