

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

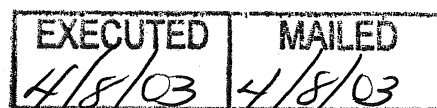
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IN THE MATTER OF )  
 )  
 )

G. R. HARVILL INC )  
MICROTEL INN & SUITES )  
DAPHNE ALABAMA )  
\_\_\_\_\_ )

CONSENT ORDER NO. 03-098-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, 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") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act §402, 33 U.S.C. § 1342, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management makes the following FINDINGS:



1. The G. R. Harvill, Inc. (also known as the "Operator") is an Alabama corporation and is constructing the motel, Microtel Inn & Suites, located on Highway 98 in Daphne, Alabama.

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

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

4. ADEM Administrative Code 335-6-10-.09-(5)(e)9 states that "there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses they serve. Furthermore, in no case shall turbidity exceed 50 Nephelometric units above background."

5. On September 24, 2002, Department personnel collected samples of the discharge and receiving stream at the above-referenced construction site. The samples revealed that the Operator had violated water quality standards by

discharging polluted runoff that caused instream turbidity to increase by 2664 n.t.u. above background in an unnamed tributary of D'Olive Creek, a water of the State.

6. Code of Alabama (1975), §§ 22-22-9(e) and 22-22A-5(17), (18), and (19), as amended, require any person discharging, or applying to discharge, pollution into waters of the state to make such reports as the Department may reasonably require.

7. On September 20, 2002, Department personnel issued a Warning Letter requiring a written response with corrective actions and an updated BMP plan. The response was required to be prepared by a qualified credentialed professional. A response was received by the Operator on October 7, 2002, but did not include corrective actions or an updated BMP plan. Furthermore the response was not prepared by a qualified credentialed professional.

8. G. R. Harvill, Inc. 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 Alabama Water Pollution Control Act, G. R. Harvill, Inc. has consented to the terms of this Consent Order.

9. 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 Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), , as amended, and with the consent of G. R. Harvill, Inc. it is hereby ORDERED:

A. That, not later than 30 days after the effective date of this Consent Order, G. R. Harvill, Inc. shall pay to the Department a civil penalty in the amount of \$2,500.00 for the violations cited herein.

B. That all penalties due pursuant to this 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, by March 21, 2003, all areas of disturbance at the facility will be permanently stabilized. If after March 21, 2003, there are areas of disturbance that have not been permanently stabilized, then G. R. Harvill, Inc. is required to submit a Notice of Registration under ADEM Administrative Code Chapter 335-6-12.

D. 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.

E. 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.

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

G. 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 7 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.

H. 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.

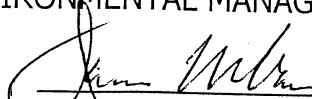
I. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This

Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.

G. R. Harvill, Inc.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
\_\_\_\_\_  
(Name of Authorized Representative)

  
\_\_\_\_\_  
James W. Warr

V.P.  
\_\_\_\_\_  
Title

Director

Date Signed: 3/31/03

Date Signed: 8 APRIL 2003