

# ADEM

## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301463 36130-1463 ♦ 1400 COLISEUM BLVD. 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

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



BOB RILEY  
GOVERNOR

Facsimiles: (334)

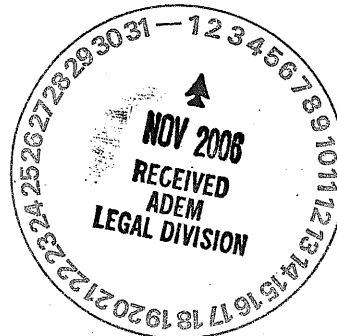
Administration: 271-7950  
General Counsel: 394-4332  
Communication: 394-4383  
Air: 279-3044  
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Groundwater: 270-5631  
Field Operations: 272-8131  
Laboratory: 277-6718  
Mining: 394-4326

November 2, 2006

CERTIFIED MAIL

7004 2890 0000 4835 6972

JAMES M SCOTT  
CORN CREEK LLC  
PO BOX 6015  
MONTGOMERY AL 36106



RE: CONSENT ORDER 07-007-CMNPS  
Elmore County  
Smokerise II, Plat 1  
Elmore County (051)  
NPDES Registration ALR165707  
North end of Mark Trail

Dear Mr. Scott:

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 **Will McBryde, Construction Unit, Mining & Nonpoint Source Section**, by email at [wdmcbryde@adem.state.al.us](mailto:wdmcbryde@adem.state.al.us) or by phone at (334) 394-4320.

Sincerely,

Steven O. Jenkins, Chief  
Field Operations Division

soj/jk File:ECO/24991

c: Water Management Division, EPA Region IV  
Office of Public Affairs, ADEM

Enclosure: Signed Original Consent Order



Birmingham Branch  
110 Vulcan Road  
Birmingham, Alabama 35209-4702  
(205) 942-6168  
(205) 941-1603 [Fax]

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, Alabama 35603-1333  
(256) 353-1713  
(256) 340-9359 [Fax]

Mobile Branch  
2204 Perimeter Road  
Mobile, Alabama 36615-1131  
(251) 450-3400  
(251) 479-2593 [Fax]

Mobile - Coastal  
4171 Commanders Drive  
Mobile, Alabama 36615-1421  
(251) 432-6533  
(251) 432-6598 [Fax]



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IN THE MATTER OF )  
 )  
 )  
CORN CREEK, LLC ) CONSENT ORDER 07-007-CMNPS  
SMOKERISE II, PLAT 1 )  
WETUMPKA, T18N, R19E, S21 )  
ELMORE COUNTY, ALABAMA )  
NPDES ALR165707 )  
 )

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Corn Creek, LLC (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Code of Alabama, 1975, §§ 22-22-1 through 22-22-14, as amended, and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

1. The Operator is an Alabama Limited Liability Corporation constructing the residential subdivision Smokerise II, Plat 1 (hereinafter "Facility") located in T18N, R19E, S21, in Wetumpka, Elmore County, Alabama. James M. Scott Jr. is the manager responsible for the Operator's compliance with State and federal environmental laws and regulations. Sediment and other pollutants in stormwater runoff from the Facility

have the potential to discharge and/or have discharged to an unnamed tributary to Harwell Mill Creek, a water of the State, classified for Fish & Wildlife.

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 ADEM Admin. Code R. 335-6-12-.05(1), the Operator is required to register for and obtain National Pollutant Discharge Elimination System (hereinafter "NPDES") coverage prior to commencing and/or continuing regulated disturbance activities.

4. Pursuant to ADEM Admin. Code R. 335-6-12-.05(2), all NPDES construction sites/activities and noncoal mining sites/activities less than five (5) acres in size in Alabama are required to fully implement and regularly maintain effective Best Management Practices (hereinafter "BMPs") to the maximum extent practicable, and in accordance with the Operator's Construction Best Management Practices Plan (hereinafter "CBMPP") that has been prepared by a Professional Engineer licensed to practice in the State of Alabama (hereinafter "PE") or by an ADEM recognized qualified credentialed professional (hereinafter "QCP").

5. 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.

6. 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.

7. During an inspection of the Facility on May 6, 2004, the Department documented that the Operator had not registered for and obtained NPDES coverage prior to commencing regulated disturbance activities.

8. As a result of an inspection on May 6, 2004, on June 1, 2004, the Department sent to the Operator a Warning Letter citing the Operator's failure to register for and obtain NPDES coverage prior to commencing regulated disturbance activities.

9. On June 14, 2004, the Operator responded to the Warning Letter stating that an engineer had been hired to correct problems at the Facility, but the response failed to specifically address all of the issues raised in the Warning Letter.

10. On July 30, 2004, a Notice of Violation (NOV) was sent to the Operator by the Department as a result of the inadequate response to the June 1, 2004, Warning Letter. The NOV notified the Operator of deficiencies documented at the Facility, requested the Operator to register for NPDES coverage, requested the Operator to submit to the Department a copy of the CBMPP for the Facility within seven (7) days of receipt of the NOV, and requested the Operator to submit certification by a QCP that all deficiencies at the Facility had been corrected within fifteen (15) days of receipt of the NOV. As of March 1, 2006 the requested CBMPP and certification had not been submitted to the Department.

11. On August 23, 2004, the Operator submitted to the Department a Notice of Registration (hereinafter "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 ALR165707 to the Operator on November 4, 2004. Registration AL165707 expired on November 3, 2005. As of March 1, 2006, an NOR requesting re-registration has not been submitted to the Department.

12. The June 1, 2004, Warning Letter requested the Operator to submit to the Department certification by a QCP that all deficiencies at the Facility had been corrected within seven (7) days of receipt of the Warning Letter. As of March 1, 2006, the requested information had not been submitted to the Department.

13. During inspections of the Facility on May 6, 2004; November 8, 2004; and June 17, 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 an unnamed tributary to Harwell Mill Creek.

14. During the June 17, 2005, inspection by the Department, significant accumulations of sediment resulting from discharges at the Facility were observed offsite and in an unnamed tributary to Harwell Mill Creek.

15. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed.

16. The Department has agreed to the terms of this Consent Order in an effort to resolve the violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violation(s). The Department has

determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### CONTENTIONS

17. Pursuant to Code of Alabama, 1975, § 22-22A-5(18)c., in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violation(s); and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** While the noted violation(s) caused harm, the noted violation(s) did not appear to cause irreparable harm to the environment. There is no evidence that the noted violation(s) were a threat to the health or safety of the public.

B. **THE STANDARD OF CARE:** The Operator did not implement and fully maintain effective BMPs at the Facility. Excessive sediment was allowed to be

discharged from the Facility by the Operator. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's delay to respond to the noted violation(s).

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(S) UPON THE ENVIRONMENT: The Operator took little or no action to minimize or mitigate the effects of the noted violation(s) upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history as described in the stipulation(s).

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

#### ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors

enumerated in Code of Alabama, 1975, § 22-22A-5(18)c., as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violation(s) alleged herein. Therefore, the Department and the Operator agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of Seven-Thousand Five Hundred Dollars (\$7,500) in settlement of the violation(s) alleged herein within forty-five (45) days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five (45) days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Operator 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  
PO Box 301463  
Montgomery, Alabama 36130-1463

C. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to ensure immediate and future compliance with the AWPCA, applicable ADEM 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, except as



may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order.

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

E. The Operator agrees, unless relieved of this requirement in writing by the Department, that:

1. all inspections/evaluations shall be performed by a PE, a QCP, a qualified person under the direct supervision of a PE/QCP, or by a 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, reports, 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.

The Operator agrees, within seven (7) days of the receipt of any written comments from the Department, to modify any application, plan, information, report, or other submittal, or submit additional information/clarification to the Department to address any comments made by the Department in writing.

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

G. The Operator agrees, within ten (10) days after the effective date of this Consent Order, to submit to the Department a complete NPDES registration, including the required fee, for the Facility.

H. The Operator agrees, within ten (10) days after the effective date of this Consent Order, to submit to the Department a 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.

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

J. The Operator agrees, within twenty (20) days after the effective date of this Consent Order, to implement effective BMPs, implement any plan(s) required by this Consent Order, and correct all deficiencies at the Facility, offsite conveyances, and

affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

K. The Operator agrees, within twenty-five (25) days after the effective date of this Consent Order, to 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.

L. The Operator agrees, within thirty (30) days after the effective date of this Consent Order, to submit to the Department a written report detailing the results of comprehensive inspections of all other ADEM NPDES regulated facilities/sites owned, operated, controlled, registered, permitted or required to be registered/permitted by the Operator (hereinafter "Sites"), offsite conveyances, and affected State waters.

M. The Operator agrees, within thirty-five (35) days after the effective date of this Consent Order, to submit to the Department complete registration(s) for any Sites requiring NPDES coverage, and a detailed plan, if needed, for implementation and maintenance of effective BMPs and correction of any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

N. The Operator agrees, within fifty (50) days after the effective date of this Consent Order, to, if needed, implement effective BMPs and correct any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected

State waters, including sediment removal/remediation in a manner acceptable to the Department.

O. The Operator agrees, within fifty-five (55) days after the effective date of this Consent Order, to submit to the Department a certification for each of the Sites subject to this Consent Order that effective BMPs have been implemented, any deficiencies have been corrected, complete registration(s) have been submitted to the Department for any Sites requiring NPDES coverage, and that full compliance with the requirements of ADEM Admin. Code Ch. 335-6-12 has been achieved at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

P. 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.

Q. The parties agree 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 violation(s) which are cited in this Consent Order.

R. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

S. 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 the Circuit Court of Montgomery County. 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 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 have been beyond the reasonable control of the Operator) 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 (10) 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 Operator, 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 the Department is not obligated to do so.

T. The Department and the Operator 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 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.

U. The Department and the Operator 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 Operator does hereby waive any hearing on the terms and conditions of same.

V. The Department and the Operator agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

W. The Department and the Operator agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of

proposed penalty Orders to the public, and that the public have at least thirty (30) days within which to comment on the Consent Order.

X. The Department and the Operator agree that, should any provision of this Consent 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.

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

Z. The Department and the Operator agree that, except as otherwise set forth herein, this Consent 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 Operator of the Operator's obligations to comply in the future with any permit coverage.

Executed in duplicate with each part being an original.

CORN CREEK, LLC

James M. Scott Jr  
(Signature of Authorized Representative)

JAMES M. SCOTT JR  
(Print Name of Authorized Representative)

MANAGER  
Title

Date Signed: 28 July 06

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Onis "Trey" Glenn, III  
Director

Date Signed: 10/25/06

# ADEM

## ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

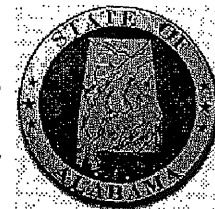
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Laboratory: 277-6718  
Mining: 394-4326

### ADEM WORKSHEET FOR NPDES CONSTRUCTION STORMWATER PENALTY ORDERS

The Environmental Management Act, Code of Alabama(1975), 22-22A-5 states:

" Any civil penalty assessed or recovered under paragraph a. or b. of this subdivision shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department under paragraph a. of this subdivision shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation for purposes of this subdivision. In determining the amount of any penalty, consideration shall be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. ..."

**Facility Name:** Corn Creek LLC – Smokerise II Plat 1

**NPDES #:** ALR165707

**ADEM Consent Order:** 07-007-CMNPS

**Location:** Located off Mark Trail, near Wetumpka, Elmore County, Alabama

Type of Violation	Past Order Penalty Range (Dollars)	Statutory Range (Dollars)
Reporting	100-1,000	100- 25,000
Records	100-1,000	100-25,000
CBMPP, SPCC, Other Required Plans	100-1,500	100- 25,000
Monitoring	100-1,000	100- 25,000
Operator QCP/QCI Inspections	100-1,000	100- 25,000
Permit Coverage	100-10,000	100- 25,000
Noncompliant Discharge	100-1,500	100- 25,000
Inadequate/No Response	100-25,000	100- 25,000
BMP	100-5,000	100- 25,000
Implementation/Maintenance/Effectiveness	100-10,000	100- 25,000
Sediment Deposition Offsite	100-10,000	100- 25,000
Water Quality Standards	100- 25,000	100- 25,000
Order Requirement	100-5,000	100- 25,000

Birmingham Branch  
110 Vulcan Road  
Birmingham, Alabama 35209-4702  
(205) 942-6188  
(205) 941-1603 [Fax]

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, Alabama 35603-1333  
(256) 353-1713  
(256) 340-9359 [Fax]

Mobile Branch  
2204 Perimeter Road  
Mobile, Alabama 36615-1131  
(251) 450-3400  
(251) 479-2593 [Fax]

Mobile – Coastal  
4171 Commanders Drive  
Mobile, Alabama 36615-1421  
(251) 432-6533  
(251) 432-6598 [Fax]



**VIOLATION FACTS:** Refer to the *Stipulations* and *Contentions* sections of the above referenced ADEM Consent Order

**FACTORS CONSIDERED IN ESTABLISHING THE PENALTY AMOUNT:**

- **SERIOUSNESS OF THE VIOLATION:** While the noted violation(s) caused harm, the noted violation(s) did not appear to cause irreparable harm to the environment. There is no evidence that the noted violation(s) were a threat to the health or safety of the public.
- **THE STANDARD OF CARE:** The Operator did not implement and fully maintain effective BMPs at the Facility. Excessive sediment was allowed to be discharged from the Facility by the Operator. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.
- **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's delay to respond to the noted violation(s).
- **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Operator took little or no action to minimize or mitigate the effects of the noted violation(s) upon the environment.
- **HISTORY OF PREVIOUS VIOLATIONS:** The Operator has a history as described in the stipulation(s).
- **THE ABILITY TO PAY:** The Operator has not alleged an inability to pay the civil penalty.

**PENALTY AMOUNT:** \$7,500

**OPERATIONAL REQUIREMENTS:** Refer to the *Order* section of the above referenced ADEM Consent Order

File:ECO/24991