

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

June 9, 2014

CERTIFIED MAIL 91 7199 9991 7030 3345 7321
RETURN RECEIPT REQUESTED

Eddie Boardwine
Corporate Process Manager
Alabama Sand and Gravel, Inc.
Post Office Box 122
Billingsley, AL 36006

RE: Final Consent Order No. 14-070-CWP
Mims Pit
NPDES Permit No. AL0061191
Autauga County (001)

Dear Mr. Boardwine:

Please find enclosed ADEM Consent Order No. 14-070-CWP which requires you to take certain actions at the sand & gravel operation listed above in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Alabama Sand and Gravel, Inc., and the Department.

Please note that the civil penalty in the amount of \$70,000.00 is due not later than forty-five days after the effective date of this order.

If you have questions regarding this matter, please contact Ange Boatwright by email at maboatwright@adem.state.al.us or by phone at (334) 274-4208.

Sincerely,

A handwritten signature in black ink that reads "Glenda L. Dean". The signature is written in a cursive, flowing style.

Glenda L. Dean, Chief
Water Division

GLD/mab

File: ECO/8660

Enclosure

Cc: Thomas L. Johnston, Office of General Counsel
Schuler K. Espy, Office of General Counsel
Jeffery W. Kitchens, Water Division
Catherine A. McNeill, Water Division
Ange Boatwright, Water Division

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942 6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603 1333
(256) 353-1713
(256) 340-9359 (FAX)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479 2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
Alabama Sand and Gravel, Inc.)	
)	
Mims Pit)	
NPDES Permit No. AL0061191)	
Prattville, Autauga County, Alabama)	ORDER NO. 14-070-CWP
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Alabama Sand and Gravel, Inc., (hereinafter “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter, “AWPCA”), Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates a sand and gravel mining facility known as Mims Pit (hereinafter, “the Mine”). The Mine is located at 2110 County Road 19, Prattville, Autauga County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued National Pollutant Discharge Elimination System (hereinafter, "NPDES") Permit Number AL0061191 (hereinafter, "the Permit") to the Permittee on March 30, 2011, establishing limitations on the discharge of pollutants from such point sources, designated therein as Outfall Numbers 003, 004, 005, and 006 from the Mine to groundwater and to Swift Creek, both waters of the State. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter, "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

DEPARTMENT'S CONTENTIONS

5. The Department conducted Compliance Evaluation Inspections at the Mine on March 14, 2013, and June 18, 2013.

6. ADEM Admin. Code r. 335-6-9-.06(1) states that "no operator shall conduct his operation in such a manner as to place, or cause to be placed into a stream, soil, rock, trees, overburden or any other debris or material associated with mining operations." During the inspections referenced in Paragraph 5, the Department noted that the Permittee used mined materials to fill in an area of Wheatley Branch and an area of an unnamed tributary to Swift Creek, both waters of the State, in violation of ADEM Admin. Code r. 335-6-9-.06(1).

7. During the inspections referenced in Paragraph 5, the Department noted that the

Permittee did not have adequate Best Management Practices (hereinafter, "BMPs") in place at multiple points along Swift Creek to ensure that the rock, soil, and overburden associated with the mining operations did not enter Swift Creek. As a result, rock, soil, and overburden materials were deposited into Swift Creek in violation of ADEM Admin. Code r. 335-6-9-.06(1).

8. ADEM Admin. Code r. 335-6-9-.03 states that "[a]ll surface mining operations shall be conducted in such a manner as to minimize their impact on water quality to avoid contravention of applicable water quality standards. To this end, all surface mine operators shall provide the Department with a Pollution Abatement and/or Prevention Plan" (hereinafter, "PAP Plan"). The Permittee submitted a PAP Plan to the Department on December 7, 2010.

9. During the inspections referenced in Paragraph 5, the Department noted that the Permittee failed to properly implement the PAP Plan submitted to Department by not having a fifty foot setback along portions of Swift Creek, Wheatly Branch, and an unnamed tributary to Swift Creek that were contained within the designated mining area. Furthermore, there were no BMPs in place to control the runoff from areas that could not be feasibly routed through a permitted outfall. This allowed sediment to enter Swift Creek, Wheatly Branch, and an unnamed tributary to Swift Creek in violation of ADEM Admin. Code r. 335-6-9-.03.

10. Part II.A.1. of the Permit requires that the Permittee maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Permit. During the inspections referenced in Paragraph 5, the Department observed that the emergency spillway for Outfall 003 was not built according to the PAP Plan submitted to the Department. In addition, the ditches carrying the discharges from Outfalls 003 and 006 were not properly stabilized and allowed eroded sediment and gravel to be deposited into Swift Creek. As a result, the eroded material from Outfall 003 caused the formation of a gravel bar downstream of the discharge in violation of ADEM Admin. Code r.

335-6-9-.03 and Part II.A.1. of the Permit.

11. Part II.A.2.e. of the Permit requires that all surface drainage or storm water runoff which originates within or enters the Permittee's premises and which contains any pollutants or other wastes shall be discharged, if at all, from a point source identified in the Permit. During the inspection on March 14, 2013, it was noted that the drainage from disturbed areas between the sediment basins and Swift Creek was not routed through a permitted outfall, allowing sediment to be deposited into Swift Creek in violation of ADEM Admin. Code r. 335-6-9-.03 and Part II.A.2.e. of the Permit.

12. During the inspection on March 14, 2013, it was noted that a breach in the embankment of one of the ponds in series located in the northern section of the Mine allowed a significant volume of water to discharge directly into Swift Creek instead of through a permitted outfall in violation of Part II.A.2.e. of the Permit.

13. Part II.A.2.a. of the Permit requires that the Permittee provide a means of subsurface withdrawal for each point source identified in the Permit. During the inspections referenced in Paragraph 5, it was noted that subsurface withdrawal was not present for Outfall 003 in violation of Part II.A.2.a. of the Permit.

14. ADEM Admin. Code r. 336-6-9-.03 Appendix A 4(j) states that "a splash pad or riprap should be placed under the discharge of the spill pipe, or the location of the discharge set...." During the inspections referenced in Paragraph 5, the Department noted that Outfalls 003 and 006 did not have the required splash pad in violation of ADEM Admin. Code r. 336-6-9-.03 Appendix A 4(j).

15. Part II.C.3. of the Permit prohibits discharges from any outfall identified in the Permit until the Department has received certification from a professional engineer, registered in the state of Alabama, that the outfall has been designed, constructed, and is able to be operated in

compliance with the Permit. At the time of the March 14, 2013, inspection, Outfall 006 was constructed and in use with evidence of previous discharges; however, certification had not been received by the Department in violation of Part II.C.3. of the Permit. The Department received certification for Outfall 006 on May 10, 2013.

16. ADEM Admin. Code r. 335-6-9-.05(1) states that “[a]ll surface mining operations must have an NPDES permit issued by the Department pursuant to this chapter.” Based on information submitted to the Department by the Permittee and the information obtained during the inspections referenced in Paragraph 5, the Department determined that surface mining operations have been conducted outside of the area covered by the Permit, in violation of ADEM Admin. Code r. 335-6-9-.05(1).

17. Permit Condition I.B.1.a. states that “[t]he Permittee shall collect at least one grab sample of the discharge to surface waters from each point source identified on Page 1 of this Permit and described more fully in the Permittee’s application twice per month at a rate of at least every other week if a discharge occurs at any time during the two week period....” During the inspection conducted on June 18, 2013, it was noted that Outfall 003 was discharging; however, the DMR submitted to the Department by the Permittee stated that there was no discharges during the month of June 2013. The Permittee violated Permit Condition I.B.1.a. by failing to collect a sample of the discharges during June 2013.

18. Pursuant to Ala. Code § 22-22-9(e), when a person receives a Notice of Violation (hereinafter, “NOV”) from ADEM, “[w]ithin such time as may be specified in such notice, such person shall file with [ADEM] a full report showing steps that have been taken and are being taken to control such discharge or pollution.” As a result of the March 14, 2013, inspection, the Department issued a NOV to the Permittee on May 16, 2013, requiring the Permittee to submit within thirty days a written report prepared by an engineer registered to practice in the state of

Alabama describing the steps that had been taken to correct the violations listed in the NOV. The response was due to the Department on June 19, 2013. The Department received a response to the NOV on June 30, 2013. The Department determined after review that the response did not meet the intent of the NOV, because the response, though written by a professional engineer, did not include an engineering report nor did it address all of the violations included in the NOV. The Permittee violated Ala. Code § 22-22-9(e) by failing to provide a timely and full engineering report describing the steps taken to correct the violations addressed by the NOV.

19. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration 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 that delayed compliance may have conferred 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. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: In arriving at the civil penalty, the Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to public. Based partially on the volume of sediment that had been discharged from the Mine into Swift Creek, the Department has made plans to initiate the preliminary testing necessary for consideration of Swift Creek's inclusion on

the § 303(d) List, a list of waters for which technology-based limits alone do not ensure attainment of applicable water quality standards.

B. THE STANDARD OF CARE: The Department noted that the violations, both technical and nontechnical, were easily avoidable with proper monitoring, reporting, and BMP implementation/maintenance.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee avoided certain costs associated with the failure to obtain a modification of the Permit to expand the coverage area prior to initiating mining operations in areas not covered by the Permit; the failure to use adequate BMP's along Swift Creek; the failure to properly implement the PAP Plan; the failure to sample and report discharges in June 2013; and the failure to timely submit a full engineering report in response to the NOV. The Department has determined that an economic benefit was conferred upon the Permittee as a result of these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Permittee indicated in the NOV response referenced in Paragraph 18 that repairs were made to the sediment basins and rip rap was added to create a splash pad.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permit was transferred to the Permittee on July 1, 2007. The Department has no evidence of a history of violations by the Permittee at the Mine prior to those noted herein since the transfer of the Permit.

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

G. OTHER FACTORS: 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 desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment 1.

I. The Department neither admits nor denies the Permittee's contentions, which are set forth below. 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 alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

20.A. In response to the Department's contentions in Paragraph 6, the USGS topographic map included in the permit application indicates that the confluence of an unnamed tributary to Swift Creek and Swift Creek itself was approximately 1,000 feet south of the northern boundary of the Mims Pit. The Permittee is currently reclaiming the area to create a wetland in accordance with a Corps of Engineers (COE) Nationwide Permit 27, "Aquatic Habitat Restoration, Establishment and Enhancement Activities (NWP 27). In regard to the unnamed tributary, Permittee could also restore the USGS mapped location of the unnamed tributary. Similarly, the USGS topographic map indicates that the confluence of Wheatley Branch and Swift Creek was near the northern boundary of the Mims Pit. The Permittee intends to also reclaim that area to create a wetland pursuant to the provisions of another NWP 27 to be obtained from COE. As part of the future effort, Permittee would also restore the mapped location of Wheatley Branch.

B. In response to the Department's contentions in Paragraph 7, the April 17, 2013, Inspection Report of the March 14, 2013, inspection notes several specific BMP deficiencies: a

breach in the sediment/stormwater basin on the northern portion of the facility, lack of set-back between the mined area and the creek, and that the ditches carrying discharges from Outfalls 003 and “004” (see bullet below) were not stabilized properly. The breach in sediment/stormwater basin, the lack of set back and deficiencies in the stabilization of the ditches carrying discharges from Outfall 003 and 006 were caused by the floodwater damage to the facility during the previous January through March 2013.

- The flooding had resulted in various breach points in the berms surrounding the sediment/stormwater basins which were repaired as soon as it was feasible to bring equipment into do so. The breaches were repaired by May 2013.
- The set-back areas had been essentially washed away by flooding along with topsoil. Re-vegetation has been on going and continues. Indeed the facility Comprehensive Reclamation Plan pursuant to the Surface Mining Act is being carried out in the northern portion of the facility.
- The reference to Outfall 004 is confusing since there was no constructed Outfall 004. The ADEM photos labeled “004” seem to be photos of Outfall 006. We will need to discuss this with you at the meeting to clarify what the ADEM viewed during its inspection.
- The ditch carrying the discharge from Outfall 003 was stabilized by lengthening pipe, creating a splash pad with rip rap in May 2013, with additional rip rap added in July, 2013, in response to ADEM’s suggestions at the close of the June, 2013, inspection.
- Permittee will exercise diligence in its future active mining operations at Mims, which will cease in three to four months, and in reclamation activities taken in accord with its obligations pursuant to the Alabama Surface Mining Act, to assure that appropriate BMPs are in place to prevent any rock, soil or overburden associated with mining operations from entering Swift Creek.

C. In response to the Department’s contention 9, during the flooding events, from January-March, 2013 floodwaters inundated and removed large portions of the entire 50-foot wide set back. Following the flooding, soil has been replaced to encourage revegetation. Active mining was complete in this area as of approximately April, 2013, and revegetation as part of the on-going activities to fulfill the Comprehensive Reclamation Plan has been proceeding since

April, 2013. In the inspection report from the June 18, 2013, inspection, Permittee believes the referenced road bordering Swift Creek was not a road used for mining operations, but was necessary to access and repair damage from flooding.

D. In response to the Department's contention 10, the emergency spill way for Outfall 003 was built according to the PAP Plan at page 4, under the heading "IX. Waste Facilities," As stated above, rip rap was restored for Outfall 003 in May, 2013 with additional rip rap protection added in July, 2013. Additional riprap was also provided for Outfall 006 in July, 2013.

E. In response to the Department's contentions 11 and 12 , the inspection of March 14, 2013, followed significant flooding of the Mine and the entire surrounding area. During the inspection although remedial work was in progress, all the drainage had not been able to be reconfigured so that all stormwater would drain to the sediment/stormwater basins and be discharged through a permitted outfall. By May, 2013, all breaches were repaired and drainage was properly routed to permitted outfalls.

F. In response to the Department's contention 13 , the subsurface withdrawal for Outfall 003 was installed in June, 2013.

G. In response to the Department's contention 14, as stated above, the splash pad for 003 was reinforced in May, 2013, with additional material added in July, 2013 and for 006 additional riprap was added in July 2013.

H. In response to the Department's contention 15, due to the flooding as described above, receding flood waters tended to discharge at the point of least resistance, including in this case the piping structure for Outfall 006E in conjunction with the stormwater/sediment basin. It was not the intent of Permittee to use 006 as an "Outfall", since PE Certification had not yet been submitted and this was not an outfall serving "mining activity" but the sedimentation basin was under construction.

I. In response to the Department's contention 16, as discussed above, Permittee plans to reclaim the area near the northern boundary in the vicinity of the mapped confluence of Wheatley Branch and Swift Creek to create a wetland in accord with COE Nationwide Permit 27. Mining has ceased in this area and reclamation and wetland creation as begun. Additionally, as stated above, active mining will cease within 3 to 4 months over the entire site. Future operations will employ GPS coordinates and field markings prior to any activity to assure that mining activity is within the permit boundary.

J. In response to the Department's contention 17, Plant personnel have been re-trained in the extreme importance of carefully viewing discharge points daily as well as all areas of the Mine to assure that there are no discharges to Swift Creek or its tributaries. If discharge from permitted Outfalls occurs, sampling will take place in accordance with Permit Condition I.B.1.a. Permittee interprets the condition as follows: Once a grab sample is taken during a calendar week, then the next calendar week must be skipped before another sample can be taken for that month. For example, if a sample is taken during the first calendar week then week two must be skipped and week three and four would be eligible for another sampling event. If the sample was not taken until week two, then the sampling could not take place until week 4.

K. In response to the Department's contention 18, in the future Permittee will respond to any NOV with an engineering report prepared by a professional engineer addressing all of the alleged violations in the NOV. Additionally, Permittee will provide a written response to any inspection report it receives from ADEM.

21. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, including previous penalty amounts assessed for similar violations, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$70,000 for the violations stated herein, not later than forty-five days after the issuance of this Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery to recover the civil penalty.

B. 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. The Permittee shall submit to the Department an Engineering Report that identifies the potential causes of noncompliance, and that summarizes an investigation of the changes and actions necessary for the Permittee to implement to achieve compliance with the Permit and state and federal regulations and to mitigate any existing effects the violations have

had on the environment. The Engineering Report must address all Mine areas within the Permittee's control as well as the areas of the Permittee's operation outside the coverage of the current permit which drain to Swift Creek. The Permittee shall submit the Engineering Report to the Department not later than forty-five days after the effective date of this Order. The Engineering Report shall include a schedule for implementation (i.e., a Compliance Plan). The Engineering Report shall also include a comprehensive reclamation plan addressing the areas of operation outside the coverage of the current permit. At a minimum, the Permittee's Engineering Report shall address the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment works. The Engineering Report must also evaluate the feasibility of sediment removal from Swift Creek and the restoration of Swift Creek, Wheatly Branch, and the unnamed tributary to Swift Creek; and if determined feasible, it must outline the extent and method of sediment removal and stream restoration in keeping with any rules, regulations, or requirements of the United States Army Corps of Engineers. If sediment removal is determined to be feasible, The Report shall also include a schedule of implementation. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the Permit or state and federal regulations, or is not sufficient to feasibly mitigate the effects the violations have had on the environment, then the Permittee shall modify the Engineering Report so that it does meet these requirements. The Permittee shall submit modifications to the Engineering Report, if required, to the Department so that they are received no later than thirty days after receipt of the Department's comments.

D. The Permittee shall complete implementation of the recommendations made in the Engineering Report, including any modification identified by the Department, in accordance

with the schedule outlined in the final version of the Engineering Report.

E. The Permittee shall prepare and submit detailed Progress Reports to the Department describing the Permittee's progress towards achieving compliance with items presented in the Engineering Report upon the Department's request.

F. The Permittee shall comply with all other terms and conditions of the Permit immediately upon the effective date of this Consent Order.

G. The Permittee shall prepare and submit to the Department a complete application for enrollment in the Department's Electronic Environmental DMR Reporting System Program (hereinafter "E2 Program") for the Mine, so that it is received by the Department not later than thirty days after the effective date of this Order. If the Department determines through its review of the submitted application that the submittal is not sufficient for the Permittee to participate in the E2 Program, then the Permittee shall modify the application so that it is sufficient. The Permittee shall submit modifications to the application, if required, so that they are received by the Department no later than fourteen days after receipt of the Department's comments. Upon acceptance by the Department into the E2 Program, the Permittee shall begin the electronic submittals of DMRs through the E2 Program no later than the 28th day of the month following the first complete monitoring period. The Permittee shall fully implement all aspects of the E2 Program including the cessation of paper DMR submittals, no later than ninety days after acceptance into the E2 Program, unless an extension is granted in writing by the Department. The Permittee shall abide by all terms, conditions, and limitations of the E2 Program immediately upon acceptance into the E2 Program

H. The Permittee shall submit a certification to the Department, signed by a Professional Engineer licensed to practice in the State of Alabama, indicating whether or not the Permittee is in compliance with all requirements of this Order. The Permittee shall submit the

certification so that it is received by the Department not later than thirty days after the final compliance date included in the Engineering Report.

I. This Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

J. 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 the 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 the Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

K. 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.

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

M. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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 that are beyond the reasonable control of the Permittee, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that 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.

N. 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 Mine that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by other Orders as may be issued by the Director, by litigation initiated by the Department, or by 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.

O. 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.

P. Final approval and issuance of this Consent Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at

least thirty days within which to comment on the proposed Consent Order.

Q. 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.

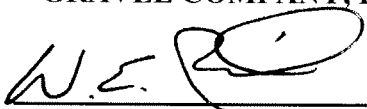
R. Any modifications of this Consent Order must be agreed to in writing and signed by both parties.

S. 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**ALABAMA SAND &
GRAVEL COMPANY, INC.**

By:



Its:

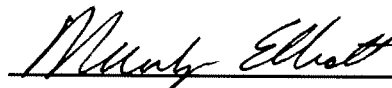
Corp. Process Manager

Date:

4/22/14

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By:



Its:

Deputy Director

Date:

6/9/2014

Attachment 1
Penalty Synopsis
Alabama Sand And Gravel – Mims Pit

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Placement of Mined Materials into a Stream	2	\$12,500	\$5,000	\$0
Causing Soil, Rock, and Overburden to be Placed into a Stream	1	\$6,250	\$2,500	\$0
Failure to Conduct Operations in a Manner as to Minimize Their Impact on Water Quality	3	\$18,750	\$7,500	\$0
Failure to Operate and Maintain Systems to Achieve Compliance	2	\$7,500	\$2,500	\$0
Failure to Route All Drainage through a Permitted Outfall	2	\$2,500	\$1,000	\$0
Failure to Provide Subsurface Withdrawal for Each Outfall	1	\$500	\$250	\$0
Failure to Provide Adequate Splash Pad	2	\$7,500	\$2,500	\$0
Discharging from an Outfall Prior to Submitting a PE Certification for the Outfall	1	\$2,000	\$1,000	\$0
Conducting Mining Operations Outside of an Area with NPDES Permit Coverage	1	\$3,000	\$1,500	\$0
Failure to Collect Discharge Sample	1	\$500	\$250	\$0
Failure to Provide a Timely/Full Engineering Report in Response to a Notice of Violation	1	\$3,000	\$1,500	\$0
Totals:	17	\$64,000	\$25,500	\$0
Economic Benefit*:				\$8,625
Mitigating Factors:				(\$500)
Ability to Pay*:				\$0
Other Factors*:				(\$27,625)
Final Penalty:				\$70,000

*Refer to the “Findings” of the Order for a description of each penalty factor.



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- Quick Tools
- Ship a Package
- Send Mail
- Manage Your Mail
- Shop
- Business Solutions

USPS Tracking™

Customer Service ›

Have questions? We're here to help.

Tracking Number: 9171999991703033457321



DELIVERED

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 17, 2014 , 10:02 am	Delivered	BILLINGSLEY, AL 36006
Your item was delivered at 10:02 am on June 17, 2014 in BILLINGSLEY, AL 36006.		
June 13, 2014	Electronic Shipping Info Received	
June 11, 2014 , 8:20 am	Available for Pickup	BILLINGSLEY, AL 36006
June 11, 2014 , 2:01 am	Processed through USPS Sort Facility	MONTGOMERY, AL 36119
June 10, 2014 , 10:59 pm	Depart USPS Sort Facility	MONTGOMERY, AL 36119
June 10, 2014 , 8:30 pm	Processed at USPS Origin Sort Facility	MONTGOMERY, AL 36119

Available Actions

- Return Receipt Electronic
- Text Updates
- Email Updates

Track Another Package

What's your tracking (or receipt) number?

