

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
Alabama Sand and Gravel, Inc.)	
Meadows Pit)	
Lowndesboro, Lowndes County, Alabama)	
NPDES Permit No. ALG850130)	Consent Order No. XX-XXX-CWP

PREAMBLE

This Special Order by Consent (“Consent Order”) is made and entered into by the Alabama Department of Environmental Management (“the Department”) and Alabama Sand & Gravel, Inc. (“the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2015 Rplc. Vol.), as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee” operates a sand and gravel mining facility known as the Meadows Pit (“the Mine”). The Mine is located on County Road 40, Lowndesboro, Lowndes 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-17, as amended.
3. Pursuant to Ala. Code § 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 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. On September 1, 2017, the Department issued coverage under General National

Pollutant Discharge Elimination System (“NPDES”) Permit Number ALG850130 (“the Permit”) to the Permittee establishing limitations on the discharge of pollutants from such point sources, designated therein as Outfall Numbers 001, 002, 003, 004, 005, 006, 007, and 008 from the Mine to Groundwater, unnamed Tributaries to Powell Creek, and unnamed tributaries to Cypress Creek, all waters of the State.

DEPARTMENT’S CONTENTIONS

5. On April 29, 2021, the Department conducted a compliance inspection at the Mine.

6. Permit Condition III.D.6.a. states “[t]he Permittee shall inspect all point sources identified in the Permittee’s Notice of Intent (NOI) and all treatment or control facilities or systems used by the Permittee to achieve compliance with the terms and conditions of this Permit at least as often as the applicable sampling frequency specified in Part III.D.1. of this Permit.”

7. Permit Condition III.D.6.b. states “[t]he Permittee shall maintain a written log for each point source identified in the Permittee’s NOI in which the Permittee shall record [certain] information.”

8. During the records review associated with an April 29, 2021 inspection, the Department discovered that inspection records for Outfalls 007 and 008 for May 2020 and Outfall 001 for December 2020 were missing. The Department also determined that the inspections conducted for February 2020, July 2020, and December 2020 were not conducted at the rate of at least every other week in accordance with Part III.D.1.a. of the Permit. Failure to maintain a written log of required routine inspections and not conducting inspections with the required frequency is in violation of Permit Conditions III.D.6.a. and III.D.6.b.

9. Permit Condition III.E.1.a states “[m]onitoring results obtained during the previous three (3) months shall be summarized for each month on a Discharge Monitoring Report (DMR) Form approved by the Department, and submitted to the Department so that it is received by the Director no later than the 28th day of the month following the quarterly reporting period (i.e., on the 28th day of January, April, July, and October of each year).”

10. A review of the DMRs submitted to the Department and the lab results associated with sampling for the DMRs as part of the April 29, 2021, inspection revealed that the DMRs submitted to the Department for August 2019, January 2020, and February 2020 did not correspond with the associated lab results. The Permittee's failure to summarize the monitoring results from each month on a DMR form approved by the Department is in violation of Part III.E.1.a. of the Permit.

11. Permit Condition IV.A.2. states "[t]he Pollution Abatement and/or Prevention (PAP) Plan shall be prepared and certified by a registered PE licensed to practice in the State of Alabama, and shall include, at a minimum, the information indicated in ADEM Admin. Code r. 335-6-9 and its Appendices A and B as well as a description of the Best Management Practices (BMPs) which will be implemented to provide control of all nonpoint source pollution that is or may be associated with the Permittee's operations. The PAP Plan shall become a part of this Permit and all requirements of the PAP Plan shall become requirements of this Permit pursuant to ADEM Admin Code r. 335-6-9-.05(2)."

12. ADEM Admin Code r. 335-6-9 Appendix B(2) states that "[...] any crossings which are necessary and which meet technical staff approval should be detailed with drawings and any other pertinent data in the pollution abatement plan, using best engineering practices."

13. The PAP Plan submitted to the Department states that stream crossings are not planned for the site and that ADEM would be notified of any crossings needed for jurisdictional waters. The inspection conducted on April 29, 2021, revealed three creek crossings at the Mine; one at an unnamed tributary to Cypress Creek and one at an unnamed tributary to Powell Creek, which are both waters of the State, and one at another unnamed tributary to Cypress Creek which is a water of the State and a jurisdictional water. To date, the Department has not received any notification or updated PAP Plan including information concerning any stream crossings. Failure to provide the Department with an updated PAP Plan or notification of stream crossings is in violation of Permit Condition IV.A.2. and ADEM Admin Code r. 335-6-9 Appendix B.

14. The April 29, 2021, inspection also noted that Outfalls 002 and 007 did not appear

to have adequate splashpads and BMPs were not being implemented to control runoff from the recently expanded Outfall 007 or at the previously mentioned creek crossings. Failure to adhere to the PAP Plan's designs and specifications are violations of ADEM Admin. Code r. 335-6-9-.05(2) and Permit Condition IV.A.2.

15. Permit Condition III.B.1. states “[a]ll surface drainage and stormwater runoff which originates within or enters the Permittee's premises and which contains any pollutants or other wastes, except for those discharges addressed in Part III.B.2. of this General Permit, shall be discharged, if at all, from a point source identified and described on the Permittee's NOI provided that the outfall associated with the point source has been constructed and certification received by the Department pursuant to Part III.C.1 of this General Permit.”

16. The inspection conducted on April 29, 2021, revealed two locations south of County Road 40 where runoff was not routed through a permitted outfall resulting in discharges of untreated stormwater runoff to unnamed tributaries to Cypress Creek. It was also revealed that an outfall had been constructed and had previously discharged to an unnamed tributary to Powell Creek that was not included in the Permittee's NOI. Failure to route all discharges through a certified outfall identified in the Permittee's NOI is in violation of Permit Condition III.B.1.

17. Permit Condition III.C.5. states “[u]nauthorized discharges from point sources for which the Department has not received certification from a registered professional engineer (P.E.) licensed to practice in the State of Alabama certifying that such facility has been constructed in accordance with the PAP Plan and good engineering practices must be monitored in accordance with Parts III.A. and D. of this Permit. Results of such monitoring must be submitted pursuant to the noncompliance notification requirements of Part III.E.2. of this Permit.”

18. To date, the Department has not received noncompliance forms for discharges from the constructed outfall that was not included in the Permittee's NOI in violation of Permit Condition III.C.5..

19. ADEM Admin. Code r. 335-6-9-.03(1) states “[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.”

20. ADEM Admin. Code r. 335-6-9-.07 states “(1) All setbacks established under Alabama Law are incorporated by reference. (2) Setbacks on other water courses shall be determined as necessary to protect water quality.”

21. Ala. Code § 9-16-7(3) requires every operator to conduct surface mining operations in a manner as to leave a minimum 50-foot setback.

22. During the inspection on April 29, 2021, the Department observed that the required setbacks along two unnamed tributaries to Cypress Creek and two unnamed tributaries to Powell Creek were not maintained and the mining operations had extended into and through the banks of the unnamed tributaries. As a result, fill material was placed in all the unnamed tributaries causing them to effectively be eliminated. At the time of the inspection, sections of the unnamed tributaries to Cypress Creek and the unnamed tributary to Powell Creek south of County Road 40 had been remediated. However, the unnamed tributary to Powell Creek north of County Road 40 and sections of the unnamed tributaries to Cypress Creek were no longer recognizable as a stream and/or waters of the State. Failure to conduct operations in a manner as to minimize their impact on water quality and failure to maintain proper setbacks is in violation of ADEM Admin. Code r. 335-6-9-.03(1), ADEM Admin. Code r. 335-6-9-.07, and Ala. Code § 9-16-7(3).

23. ADEM Admin. Code r. 335-6-9-.06(1) states “[n]o 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.”

24. The delineation submitted to the Department listed the unnamed tributary to Powell Creek north of County Road 40 as a jurisdictional stream. Placing material associated with mining operations into a stream is in violation of ADEM Admin. Code r. 335-6-9-.06(1).

25. As a result of the April 29, 2021, inspection, the Department issued a Notice of Violation (“NOV”) to the Permittee on August 5, 2021, 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 Department received a response to the NOV on September 30, 2021. The Department determined after review that the response did not fully meet the intent of the NOV because it did not sufficiently address impacts to waters of the State or waters of the U.S.

29. 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 AND BASE PENALTY:** Violations of ADEM Admin. Code div. 335-6, the Permit, and the AWPCA were noted. In arriving at the civil penalty, the Department considered the general nature of each violation, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** The Department noted that the violations, both technical and nontechnical, were easily avoidable. The Department notified the Permittee in December 2020 that the unnamed tributary to Powell Creek and the two unnamed tributaries to Cypress Creek located south of County Road 40, noted in Item 22 above, were deemed to be waters of the State. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:

The Department has considered that delayed compliance conferred an economic benefit upon the Permittee, and the Department, as a result, has enhanced the penalty.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS

UPON THE ENVIRONMENT: The April 29, 2021, inspection noted that the Permittee had taken measures to stop discharges from the constructed outfall not listed in the NOI and had partially remediated the unnamed tributaries to Cypress Creek.

E. HISTORY OF PREVIOUS VIOLATIONS: On August 9, 2018, the Department

issued a Notice of Violation to the Permittee citing failure to submit DMRs. On July 01, 2019, the Department issued a Notice of Violation for violations including failure to properly display a sign, failure to properly implement the Spill Prevention Control and Countermeasure (SPCC) Plan, failure to conduct and maintain a written log of routine inspections, failure to route drainage through permitted outfalls, placing mined material into a jurisdictional wetland, failure to notify the Department of creek crossings, and lack of a proper splashpad. In consideration of the Permittee's history of previous violations, the Department enhanced the penalty.

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

penalty.

G. The civil penalty is summarized in Attachment A.

H. 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 unwarranted expense of litigation.

30. The Department neither admits nor denies the Permittee's contentions, which are set forth in Paragraphs 31 through 39 below. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations herein without 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

31. The Permittee neither admits nor denies the Department's contentions. The Permittee has agreed to the terms of this Consent Order in an effort to resolve the specific violations herein without the additional expense and delay associated with asserting all factual and legal defenses that may apply and/or appealing the alleged violations and initiating litigation in defense of its positions, particularly as to whether certain of the unnamed tributaries meet the Department's regulatory definition of waters of the State given the size of the drainage areas associated with each of them. The Permittee consents to abide by the terms of this Consent Order.

32. On April 22, 2021, the Permittee submitted to ADEM a Non-Compliance Notification Form upon learning that ADEM considered certain ditches at the Meadows Pit property to potentially be regulated under the AWPCA and/or associated regulations. The Non-Compliance Notification Form specified that the Permittee did not believe its activities violated ADEM's regulations or any other relevant law, but that the Permittee was nonetheless notifying ADEM in an abundance of caution. Specifically, ADEM's Surface Mining Rules define the term "stream" to mean "any body of water having a drainage area in excess of one square mile." ADEM Admin. Code r. 335-6-9-.02(i). The Permittee contends that none of the relevant channels referred to as unnamed tributaries is a "stream" within ADEM's definition because each has a drainage area substantially less than one square mile.

33. ADEM inspected the Meadows Pit facility on April 29, 2021.

34. On August 5, 2021, the Department issued a NOV to the Permittee raising the allegations in this Consent Order.

35. Upon receiving the NOV, the Permittee retained the services of a professional engineer, located and submitted documents that were not readily accessible at the time of the inspection, evaluated the property to identify the locations of every allegation in the NOV,

performed extensive onsite work to improve BMPs and other environmental controls, and implemented corrective actions.

36. On September 30, 2021, the Permittee submitted a letter to ADEM that: (1) explained the Permittee's legal position that it did not violate the laws or permit provisions cited by the Department; and (2) described corrective actions that the Permittee nonetheless performed in the interest of addressing ADEM's concerns. The letter also included several Attachments including documents that were not readily accessible at the time of ADEM's inspection.

37. In December 2021, the Permittee applied for additional NPDES permit coverage in an effort to further address the Department's allegations.

38. The Permittee voluntarily performed extensive corrective actions, as detailed in its September 30, 2021, submission, at considerable financial expense. The Permittee also has hired a new manager at the Meadows Pit site, who is highly committed to environmental compliance. Moreover, the Permittee is actively improving company policies, practices, and employee-education in an effort to prioritize environmental stewardship and awareness.

39. The Permittee remains committed to correcting the issues identified in this Consent Order, to improving its environmental compliance procedures and practices, and to maintaining compliance with applicable environmental laws going forward.

ORDER

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

- A. The Permittee agrees, within **forty-five days** after issuance of this Consent Order, to pay to the Department a civil penalty in the amount of \$85,000 for the violations cited

in this Consent 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 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. The Permittee agrees, immediately upon issuance of this Consent Order, to take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants from leaving the Mine and to prevent unpermitted discharges of pollutants to waters of the State.

D. The Permittee agrees, within **forty-five days** of issuance of this Consent Order, to submit to the Department, a revised Engineering Report ("the Report") that: (1) identifies the potential and known causes of noncompliance, and (2) summarizes an investigation of the changes and actions necessary to achieve compliance with the Permit and any applicable regulations and to mitigate any existing effects the violations have had on the environment. At a minimum, the Permittee's Report shall address the need for changes in maintenance and operating procedures, the need for modification of existing operations, and the need for new or additional treatment facilities and BMPs. The Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions. The schedule of implementation shall include potential dates for which corrective actions can reasonably be expected to be completed. The Report also shall address impacts to waters of the State and evaluate the feasibility of restoration of any impacted waters of the State. The 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 Report that the submittal is not sufficient to accomplish compliance with the Permit and/or state regulations or is not sufficient to feasibly mitigate the

effects of the violations on the environment, then the Permittee agrees to modify the Report accordingly. The Permittee agrees to submit modifications to the Report, if required, so that they are received by the Department no later than **thirty days** after receipt of the Department's comments.

E. The Permittee agrees to prepare and submit detailed Progress Reports to the Department describing the Permittee's progress towards achieving compliance with requirements of this Consent Order upon the Department's request.

F. The Permittee agrees to submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall submit such certification so that it is received by the Department no later than **thirty days** after the final date for corrective actions listed in the Final Compliance Plan.

G. The Permittee agrees that this Consent Order shall apply to and be binding on 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.

H. The Parties agree that, subject to the terms of these presents and subject to the provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in the Consent Order.

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

J. For the 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 the 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 or performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute a *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by 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.

K. 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 which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in 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. The Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if such future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

L. 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.

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

N. 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 Order.

O. 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.

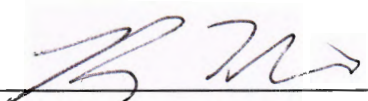
P. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

Q. 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, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
EXECUTED AND ISSUED:

By: 

By: _____

Its: VP/SLC

Its: _____

Date: 6/16/22

Date: _____

Attachment A
Alabama Sand and Gravel, Inc. – Meadows Pit
Lowndesboro, Lowndes County
ALG850130

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to Maintain a Written Log of Required Inspections	3	\$750	\$375	\$375
Failure to Conduct Required Routine Inspections at the Required Frequency	3	\$1050	\$525	\$525
Failure to Summarize Monitoring Results on a DMR	3	\$850	\$425	\$425
Failure to Provide an Updated PAP Plan	1	\$400	\$200	\$0
Failure to Implement the Requirements of the PAP Plan	5	\$7,500	\$3,750	\$0
Failure to Submit Non-Compliance Forms	1	\$500	\$250	\$250
Failure to Route All Discharges Through a Certified Outfall	3	\$9,000	\$4,500	\$4,500
Failure to Conduct Operations in a Manner as to Minimize their Impact on Water Quality	4	\$15,000	\$7,500	\$0
Failure to Conduct Mining in a Manner as to Leave a 50-Foot Setback	4	\$7,200	\$3,600	\$0
Conducting Operations such that Sediment is Placed into Stream	4	\$15,000	\$7,500	\$0

\$57,250	\$28,625	\$6,075
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total(A) + Total(B) + Total(C)]		\$91,950
Mitigating Factors (-)		\$0
Economic Benefit (+)		\$3,600
Ability to Pay (-)		\$0
Other Factors (+/-)		\$0
INITIAL PENALTY		\$95,550

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	\$(10,550.00)
Total Adjustments (+/-)	\$(10,550.00)

Total Adjustments (+/-) \$(10,550.00)

FINAL PENALTY \$85,000.00

Footnote - *See the "Findings" of the order for a detailed description of each violation and the penalty factors.