

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Rock Creek Stone, LLC.)
Addison, Winston County, Alabama)
Facility ID No. XXX-XXXX)
Unpermitted Facility)

CONSENT ORDER

No. _____

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Rock Creek Stone, LLC. ("Rock Creek") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. Rock Creek owns and operates a limestone quarry located at 338 Highway 278 in Addison, Winston County, Alabama (the "Quarry"). Rock Creek operates the Quarry without the authority of an ADEM Air Permit.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 through 22-22A-17, as amended.
3. Pursuant to Ala. Code §22-22A-4(n), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, as

amended.

4. ADEM Admin. Code r. 335-3-14-.01 states:

(1) Air Permit

(a) Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

(b) Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment or contrivance described in subparagraph (a) of this paragraph, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards established by the Department....

5. 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.

6. ADEM Admin. Code r. 335-6-9-.05 requires all surface mining operations to have a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit issued by the Department.

7. ADEM Admin. Code r. 335-6-6-.03 states that no person shall discharge pollutants into waters of the state without first having obtained a valid NPDES permit.

8. ADEM Admin. Code r. 335-6-6-.08 states that applications for new sources shall be submitted at least 180 days prior to the applicant's desired date for commencement of the new discharge. On April 7, 2023, Rock Creek submitted an application to the Department for a NPDES permit.

DEPARTMENT'S CONTENTIONS

9. On May 3, 2023, Departmental personnel performed an inspection of the Quarry and noted that Rock Creek had been conducting surface mining operations at the Quarry without a valid NPDES permit in violation of ADEM Admin. Code r. 335-6-9-.05(1).

10. On June 16, 2023, personnel from the Department's Air and Water Divisions contacted Mr. Drew Johnson, President of Rock Creek, and alerted him that operating without an air permit and NPDES permit constituted violations of the Department's regulations. Mr. Johnson stated that he did not think he could stop operating due to financial issues.

11. On June 20, 2023, Departmental personnel performed an inspection of the Quarry and noted that Rock Creek were continuing to conduct surface mining operations at the Quarry without a valid NPDES permit in violation of ADEM Admin. Code r. 335-6-9-.05(1). Additionally, it was noted that the site was discharging at the time of the inspection in violation of ADEM Admin. Code. r. 335-6-6-.03(1). The results of this inspection verified that Rock Creek Quarry was operating equipment. Rock Creek has not submitted an application for an Air Permit for constructing crushing, screening, and conveying equipment at the Quarry.

12. Thus, Rock Creek operated this equipment at least 15 days prior to receiving an Air Permit and temporary authorization to operate.

13. 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 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. 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:** Construction and operation of crushing, screening, and conveying equipment was conducted at the Quarry without obtaining an Air permit. A violation of ADEM Admin. Code div. 335-6 was noted. An additional violation consisted of conducting surface mining operations without having obtained a valid NPDES permit. The Department considers these violations to be serious.

B. **THE STANDARD OF CARE:** Rock Creek did not exhibit a standard of care consistent with the requirements of the ADEM Administrative Code. In addition, Rock Creek continued to operate after being notified of ADEM requirements.

The Department notes that these violations were easily avoidable by obtaining the appropriate permits prior to operation. In consideration of the standard of care manifested by Rock Creek, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department concludes that there are economic benefits that Rock Creek received by operating without a Permit in violation of the ADEM Administrative Code.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: Rock Creek has not been cited for other violations.

F. THE ABILITY TO PAY: Rock Creek 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 it 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.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (*See* Attachment "A", which is hereby made a part of Department's Contentions).

15. The Department neither admits nor denies Rock Creek's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in

further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

OWNER'S CONTENTIONS

16. Rock Creek neither admits nor denies the Department's Contentions. Rock Creek consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, Rock Creek, 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, 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 Rock Creek agree to enter into this ORDER with the following terms and conditions:

A. Rock Creek agrees to pay to the Department a civil penalty in the amount of \$50,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five 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. Rock Creek 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
Post Office Box 301463
Montgomery, Alabama 36130-1463

C. Rock Creek agrees to submit an Air Permit application for the operation of crushing, screening, and conveying equipment at the Site.

D. Rock Creek shall take action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Quarry and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State immediately upon issuance of this Order.

E. Rock Creek agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code Chap. 335-3-3 and ADEM Admin. Code Div 335-6.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

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

H. Rock Creek agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Rock Creek 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. Rock Creek also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Rock Creek 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 Rock Creek, 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 Rock Creek) 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 reviewing the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Rock Creek, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and Rock Creek 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 Owner shall not object to such future orders, litigation or enforcement action

based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. The Department and Rock Creek 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 Rock Creek does hereby waive any hearing on the terms and conditions of the same.

L. The Department and Rock Creek agree that this Order shall not affect Rock Creek's obligation to comply with any federal, state, or local laws or regulations.

M. The Department and Rock Creek agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

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

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

P. The Department and Rock Creek agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, state, or local law, and shall not be construed to waive or relieve Rock Creek of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

ROCK CREEK STONE, LLC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Drew Johnson

(Signature of Authorized Representative)

Lance R. LeFleur

Director

Drew Johnson

(Printed Name)

Owner / Managing Member

(Printed Title)

Date Signed: 8/3/2023

Date Executed: _____

Attachment A

**Rock Creek Stone, LLC.
Winston County, Alabama
Facility ID No. XXX-XXXX**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to apply for and maintain an Air Permit before construction began	1	\$5,000	\$5,000	-	
Operating without an Air Permit	15	\$10,000	\$5,000	-	
Conducting Surface Mining Operations without a Valid NPDES Permit	1	\$10,000	\$10,000		Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$25,000</i>	<i>\$20,000</i>	-	<i>\$45,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	

Economic Benefit (+)	\$5,000
Amount of Initial Penalty	
Total Adjustments (+/-)	
FINAL PENALTY	\$50,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.