

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
West Alabama Sand and Gravel, Inc.)	
Hubbertville Pit)	
Bluff, Fayette County, Alabama)	
)	Consent Order No. XX-XXX-CWP
NPDES Permit No. ALG850193)	

PREAMBLE

This Special Order by Consent (“Consent Order”) is made and entered into by the Alabama Department of Environmental Management (“the Department”) and West 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, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a sand and gravel mining facility known as the Hubbertville Pit (“the Mine”). The Mine is located at 6857 Highway 129, Bluff, Fayette 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 August 27, 2021, the Department issued coverage under General National

Pollutant Discharge Elimination System (“NPDES”) Permit Number ALG850193 (“the Permit”) to the Permittee establishing limitations on the discharge of pollutants from such point source(s), designated therein as Outfall Number 001, from the Mine to an unnamed tributary to Sipsey River, a water of the State.

5. On July 1, 2022, the Department reissued coverage under General NPDES Permit ALG850193.

DEPARTMENT’S CONTENTIONS

6. On February 10, 2022, the Department conducted a compliance inspection at the Mine.

7. Permit Condition III.B.1.a. 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 Notice of Intent (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.”

8. The inspection conducted on February 10, 2022, revealed four locations where surface drainage was not routed through a permitted outfall resulting in discharges of untreated discharges to an unnamed tributary to Sipsey River and a neighboring property. Failure to route all discharges through a certified outfall identified in the Permittee’s NOI is in violation of Permit Condition III.B.1.a.

9. 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.”

10. 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.”

11. During the inspection conducted on February 10, 2022, the Department observed

off-site sedimentation which resulted in sediment being deposited on a neighboring property and instream sedimentation in an unnamed tributary to Sipsey River. Failure to conduct operations in a manner as to minimize their impact on water quality and placing material associated with mining operations into a stream is in violation of ADEM Admin. Code r. 335-6-9-.06(1) and ADEM Admin. Code r. 335-6-9-.03(1).

12. 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).”

13. The PAP Plan submitted to the Department states “runoff from the disturbed areas of the site is directed into the excavated pits on site.” Part 3.3 of the PAP Plan details Best Management Practices that were to be implemented on site for sediment and erosion control. The unpermitted discharges, inadequately stabilized outer slopes and berms, and off-site sedimentation observed by Department during the inspection indicate that the site conditions do not match the information provided in the PAP Plan.

14. To date, the Department has not received noncompliance forms for discharges not routed through a permitted outfall, lack of adequate BMPs to minimize the impact on water quality, and sedimentation being deposited in the stream in violation of Permit Condition III.C.5.

15. 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. 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 is unaware of an economic benefit as a result of the Permittee's noncompliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: On April 7, 2021, the Department issued a Notice of Violation to the Permittee for conducting mining operations without an NPDES permit, for discharging of pollutants into waters of the State without having obtained a valid NPDES permit, and for failing to conduct surface mining operations in a manner to minimize their impact on water quality. 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 Paragraph 31 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.

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 shall pay to the Department a civil penalty in the amount of \$21,375 in settlement of the violations alleged herein within **forty-five days** from the issuance of this Consent Order. Failure to pay the civil penalty within forty-five days from issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County 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 shall, immediately upon issuance of this Consent Order, 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 shall, within **forty-five days** of issuance of this Consent Order, to submit to the Department, an 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 state 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. The Permittee shall 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 shall 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 shall 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. 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. 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 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.

West Alabama Sand & Gravel, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
EXECUTED AND ISSUED:

By:  _____

By: _____

Its: President _____

Its: _____

Date: 11/2/08 _____

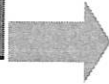
Date: _____

Attachment A
 West Alabama Sand and Gravel, Inc. – Hubbertville Pit
 Bluff, Fayette County
 ALG850193

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to Implement the Requirements of the PAP Plan	1	\$625	\$250	
Failure to Submit Non-Compliance Forms	1	\$500	\$250	
Failure to Route All Discharges Through a Certified Outfall	1	\$3,000	\$1,500	
Failure to Conduct Operations in a Manner as to Minimize their Impact on Water Quality	1	\$2,000	\$1,000	\$1,000
Failure to Implement Adequate BMPs	1	\$750	\$250	\$250
Conducting Operations such that Sediment is Placed into Stream	1	\$5,000	\$2,500	\$2,500

\$11,825	\$5,750	\$3,750
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total(A) + Total(B) + Total(C)]		\$21,375
Mitigating Factors (-)		\$0
Economic Benefit (+)		\$0
Ability to Pay (-)		\$0
Other Factors (+/-)		\$0
INITIAL PENALTY		\$21,375
Total Adjustments (+/-)		0
FINAL PENALTY		\$21,375

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	\$0.00



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