

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: _____)

North Alabama Materials, Inc. _____)
Lacey's Spring, Morgan County, Alabama _____)
Facility ID No. 712-0108-X001 _____)

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 North Alabama Materials, Inc. ("NAMI") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-17, *as amended*, and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. NAMI owns and operates a limestone quarry located at 206 Fields Road in Lacey's Spring, Morgan County, Alabama (the "Site"). NAMI operates the Quarry under the authority of ADEM Permit No. 712-0108-X001 ("Permit"), issued to it on December 1, 2022.

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. 335-3-3-.01(1) states in part that "No person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire..."

DEPARTMENT'S CONTENTIONS

5. On October 18, 2022, a member of the public reported to the Department that NAMI allowed local businesses to dump firewood, roof shingles and other items at the Site for \$50.00 a load and observed piles of these materials burning.

6. On October 19, 2022, the Department conducted an inspection of the Site and noted the following:

A. One pile of vegetation showed evidence of past burning and another pile was actively smoldering nearby in a ravine.

B. NAMI's plant manager stated that vandals caused the illegal open burning and that it utilized twenty-five to thirty loads of dirt to extinguish the fire.

7. On October 28, 2022, the Department issued a Notice of Violation ("NOV") to NAMI for conducting and allowing prohibited open burning at the site, in violation of ADEM Admin. Code r. 335-3-3-.01 and requested a response to the following:

A. Why did NAMI fail to prevent open burning on your property in violation of the Department's air pollution control rules and regulations?

B. What was the origin of the material that was burned? Was any material burned that was not vegetation?

C. How much material was burned?

D. How many times has open burning occurred at this site?

E. What measures were taken to extinguish the fires?

F. How long has NAMI been conducting unauthorized open burning? Please provide specific dates and details.

G. A NAMI employee stated that tree trimming companies are allowed to bring tree trimming material to the site. Did NAMI accept tree trimming waste? Please state, in writing that NAMI understands that material brought from offsite to the Site may not be burned under any circumstances at any time. How will NAMI ensure that this material is not burned?

H. If NAMI has accepted material brought from offsite, please provide documentation or records of the transaction(s).

I. Was NAMI (or any associated individuals) compensated for accepting waste material and/or the disposal of the material? If so, please provide records of payment.

J. What specific measures have been or will be taken to ensure compliance with the Department's open burning regulations and prevent reoccurrence of fires in violation of the Department's rules and regulations?

8. On November 28, 2022, NAMI responded to the NOV, essentially restating its October 19, 2022, explanation. Additionally, it stated that new gates would be installed, and no trespassing signs would be posted at the Site.

9. 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. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Prohibited open burning of waste was conducted at the Site during a Burn Ban. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: NAMI did not exhibit a standard of care consistent with the requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefit that NAMI may have received by conducting open burning in violation of the ADEM Admin. Code R.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is aware NAMI made efforts to minimize or mitigate the effects upon the environment by utilizing loads of dirt to extinguish the fire.

E. HISTORY OF PREVIOUS VIOLATIONS: NAMI does not appear to have been cited for prior open burning violations by the Department.

F. THE ABILITY TO PAY: NAMI 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.

10. 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).

11. The Department neither admits nor denies NAMI'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.

NAMI'S CONTENTIONS

12. NAMI neither admits nor denies the Department's Contentions. NAMI stated they only allowed local businesses to dump firewood and brush at the site at no charge. NAMI consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

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

A. NAMI agrees to pay to the Department a civil penalty in the amount of \$6,000.00 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. NAMI 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. NAMI agrees to comply with the terms, limitations, and conditions of the Permit, everyday hereafter.

D. NAMI agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code Chap. 335-3-3 and the Permit.

E. 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.

F. 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.

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

H. For purposes of this Consent Order only, NAMI 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. NAMI also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, NAMI 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 NAMI, 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 NAMI) 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 NAMI, 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.

I. The Department and NAMI 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 Site 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 NAMI 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.

J. The Department and NAMI 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 NAMI does hereby waive any hearing on the terms and conditions of same.

K. The Department and NAMI agree that this Order shall not affect NAMI's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and NAMI 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.

M. The Department and NAMI 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.

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

O. The Department and NAMI 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 NAMI of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

NORTH ALABAMA MATERIALS, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____

Attachment A
North Alabama Materials, Inc.
Madison County, Alabama
Facility ID No. 712-0108-X001

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Open Burning	1	\$4,000	\$3,500	-	
					Total of Three Factors
TOTAL PER FACTOR		\$4,000	\$3,500	-	\$7,500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$1,500
Total Adjustments (+/-) <i>Enter at Right</i>	-\$1,500

Economic Benefit (+)	
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	-\$1,500
FINAL PENALTY	\$6,000

Footnotes

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