

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)	
)	
LCS UNLIMITED, LLC)	
)	Consent Order No. 23-XXX-CWP
AUTAUGAVILLE PIT)	
EXPIRED PERMIT NO. ALG890814)	
AUTAUGAVILLE, AUTAUGA COUNTY, ALABAMA)	
)	
PETRUSIC POND PIT)	
EXPIRED PERMIT NO. ALG890830)	
PRATTVILLE, AUTAUGA COUNTY, ALABAMA)	
)	
NEIGHBORS FARM POND PIT)	
EXPIRED PERMIT NO. ALG890834)	
PRATTVILLE, AUTAUGA COUNTY, ALABAMA)	
)	
PEARSON PROPERTY)	
FACILITY ID. 890P-4TF2-GBA)	
PRATTVILLE, AUTAUGA COUNTY, ALABAMA)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department”) and LCS Unlimited, LLC (“the Operator”) 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 ADEM Administrative Code of Regulations (“ADEM Admin. Code”) promulgated pursuant thereto.

STIPULATIONS

1. LCS Unlimited, LLC is a LLC (“Operator”) engaged in surface mining operations referred to as Autaugaville Pit located on County Road 19 North in the town of Autaugaville, Autauga County, Alabama, and the Petrusic Pond Pit, Neighbors Farm Pond Pit, and Pearson Property, (“Facilities”), which are located on County Road 19 North in the city of 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, 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 Ala. Code §§ 22-22-1 to 22-22-14, as amended.

4. The following references and acronyms are used in this Order and, when used, shall have the meaning of the name or title referenced below:

BMPs	Best Management Practices
GP	ADEM NPDES General Permit ALG890000
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

5. Sediment and other pollutants in stormwater runoff from the Facilities have the potential to discharge and/or have discharged to an unnamed tributary to Pine Creek and unnamed tributaries to Swift Creek, waters of the State.

6. Pursuant to Ala. Code § 22-22-9(i)(3), “[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply [for a permit] and must obtain such permit before discharging such pollution.”

7. Pursuant to ADEM Admin. Code r. 335-6-6-.03(1), “no person shall discharge pollutants into waters of the state without first obtaining a valid NPDES permit or coverage under a valid General NPDES permit...”.

8. ADEM Admin. Code r. 335-6-12-.21(1) specifies that activity may not commence or continue without implementation and maintenance of BMPs specified in the site BMP Plan certified by a QCP. The BMP Plan and any BMPs shall meet or exceed the technical standards of ADEM Admin. Code

chap. 335-6-12, and the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas published by the Alabama Soil and Water Conservation Committee (the “Alabama Handbook”).

9. The Department granted authorization under the 2018 GP ALG8900814 to the Operator for Autaugaville Pit on August 2, 2022. The 2018 GP expired on January 31, 2023.

10. The Department granted authorization under the 2018 GP ALG8900830 to the Operator for Petrunic Pond Pit on September 14, 2022. The 2018 GP expired on January 31, 2023.

11. The Department granted authorization under the 2018 GP ALG8900834 to the Operator for Neighbors Farm Pond Pit on November 17, 2022. The 2018 GP expired on January 31, 2023.

12. To date, a request for appropriate NPDES permit coverage has not been received by the Department from the Operator for Pearson Property.

13. On September 29, 2022, the 2023 GP was reissued and will expire January 31, 2028. Part IV.S.1. of the GP specifies that Permittees who wish to continue to discharge upon permit expiration, must submit an NOI, 90 days prior to expiration of the 2018 GP.

14. On March 17, 2023, the Operator submitted a NOI requesting reauthorization of coverage under the reissued GP for Autaugaville Pit.

15. On March 31, 2023, the Operator submitted a NOI requesting initial authorization of coverage under the reissued GP for Pearson Property.

DEPARTMENT’S CONTENTIONS

PETRUNIC POND PIT

16. During an inspection of the Petrunic Pond Pit on March 9, 2023, the Department documented that the Operator had not applied for and obtained NPDES coverage, although regulated disturbance activities and/or discharges were continuing, in violation of ADEM Admin. Code r. 335-6-6-.03(1).

17. During the March 9, 2023, inspection of the Petrunic Pond Pit, the Department observed and documented the improper implementation and failure to maintain effective BMPs, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

NEIGHBORS FARM POND PIT

18. During an inspection of Neighbors Farm Pond Pit on March 9, 2023, the Department documented that the Operator had not applied for and obtained NPDES coverage, although regulated disturbance activities and/or discharges were continuing, in violation of ADEM Admin. Code r. 335-6-6-.03(1).

19. During the March 9, 2023, inspection of the Neighbors Farm Pond Pit, the Department observed and documented the improper implementation and failure to maintain effective BMPs, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

PEARSON PROPERTY

20. During an inspection of the Pearson Property on March 9, 2023, the Department documented that the Operator had not applied for and obtained NPDES coverage, although regulated disturbance activities and/or discharges were continuing, in violation of ADEM Admin. Code r. 335-6-6-.03(1).

21. During the March 9, 2023, inspection of the Pearson Property, the Department observed and documented the improper implementation and failure to maintain effective BMPs, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

AUTAUGAVILLE PIT

22. During an inspection of the Autaugaville Pit on March 16, 2023, the Department documented that the Operator had not applied for and obtained NPDES coverage, although regulated disturbance activities and/or discharges were continuing, in violation of ADEM Admin. Code r. 335-6-6-.03(1).

23. During the March 16, 2023, inspection of the Autaugaville Pit, the Department observed and documented the improper implementation and failure to maintain effective BMPs, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

24. The Department neither admits nor denies the Operator'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.

25. 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 violations, 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 violations 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:** Based on the information available to the Department, violations of ADEM Admin. Code r. 335-6 and the AWPCA were noted. 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:** In considering the standard of care manifested by the Operator, the Department noted that effective BMPs had not fully been implemented and regularly maintained and that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements. Additionally, the Department noted the violations of operating without proper permit coverage were non-technical requirements and easily avoidable. In consideration of the standard of care manifested by the Operator, the Department has enhanced the penalty.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has considered that the Operator received an economic benefit by avoiding and/or delaying certain costs associated with applying for NPDES permit coverage, performing required inspections, and

implementing and maintaining effective BMPs. In consideration of the economic benefit to the Operator, the Department enhanced the penalty.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any previous violations by the Operator.

F. THE ABILITY TO PAY: The Operator has not provided information indicating an inability to pay a civil penalty.

G. 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.

OPERATOR'S CONTENTIONS

The Operator neither admits nor denies the Department's contentions. The Operator consents to abide by the terms of this Consent Order.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department 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 the Operator ("Parties") agree to enter into this Consent Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$42,320.00 in settlement of the violations alleged herein. The Operator and the Department agree that the administrative

penalty assessed herein shall be paid by the Operator to the Department according to the schedule in the table below. Failure to pay the civil penalty according to the schedule in the table below may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

Payment #	Amount	Due Date
1	\$7055.00	September 1, 2023
2	\$7053.00	October 1, 2023
3	\$7053.00	November 1, 2023
4	\$7053.00	December 1, 2023
5	\$7053.00	January 1, 2024
6	\$7053.00	February 1, 2024
TOTAL	\$42320.00	

B. The Operator 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
PO Box 301463
Montgomery, Alabama 36130-1463

C. The Operator shall take action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facilities and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State immediately upon issuance of this Order.

D. The Operator shall, within **fifteen days** of issuance of this Order, submit to the Department NPDES Permit Application for the Pearson Property to obtain appropriate coverage. The submittal must reflect the current operations at the Facility. Any modifications to the application, if required, shall be submitted to the Department so that they are received no later than **thirty days** after the Operator's receipt of the Department's comments.

E. The Operator shall, within **sixty days** of issuance of this Order, complete all reclamation work at Autaugaville Pit, Petrunic Pond Pit, and Neighbors Pond Pit. During this time, no mining activities shall occur.

F. The Operator shall, within **sixty days** of issuance of this Order, submit to the Department a certification signed by a QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site BMP Plan, and ADEM Admin. Code r. 335-6-12, have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin Code r. 335-6-12, has been achieved at the Facilities, offsite conveyances, and affected State waters.

G. 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.

H. 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.

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

J. 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 Operator 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 Operator, 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 Operator)

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 shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Operator 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 Operator, 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 Facilities 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 Operator 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 Operator does hereby waive any hearing on the terms and conditions of same.

M. This Consent Order shall not affect the Operator's obligation to comply with any federal, state or local laws, regulations, or permit requirements.

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 Operator of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LCS UNLIMITED, LLC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED;

Lisa C. Sweeney
(Signature of Authorized Representative)

Lance R. LeFleur, Director

Lisa C. Sweeney
(Print Name of Authorized Representative)

Date Signed: _____

Owner
Title

Date Signed: 5-18-2023

Attachment 1

**Autaugaville Pit, Petrunic Pond Pit, Neighbors Farm Pond Pit, Pearson Property
 Autauga County
 ALG890814, ALG890830, ALG890834, FID 890P-4TF2-GBA**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Operating without a Permit/appropriate permit	4	\$20,000.00	\$10,000.00	
Failure to implement/maintain adequate BMPs	4	\$10,000.00	\$ 5,000.00	
		\$30,000.00	\$15,000.00	\$0.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment		Total (A)	Total (B)	Total (C)
		Base Penalty Total [Total (A) + Total (B) + Total (C)]		
		\$45,000.00		
Mitigating Factors (-)		Mitigating Factors (-)		
Economic Benefit (+)		Economic Benefit (+)		
		\$7,900.00		
Ability to Pay (-)		Ability to Pay (-)		
		Other Factors (+/-)		
Other Factors (+/-)	-\$10,580.00	-\$10,580.00		
Total Adjustments (+/-)	-\$10,580.00	INITIAL PENALTY		
		\$52,900.00		
		Total Adjustments (+/-)		
		-\$10,580.00		
		FINAL PENALTY		
		\$42,320.00		

Footnotes

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