

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

RB MILLER PROPERTIES, LLC

RB MILLER PROPERTY

PERMIT NO. ALG890895

COTTONDALE, TUSCALOOSA COUNTY, ALABAMA

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Consent Order No. XX-XXX-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department") and RB Miller Properties, 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. RB Miller Properties, LLC ("Operator") operates a surface mining operation known as RB Miller Property ("Facility") located on Highway 11 in the town of Cottondale, Tuscaloosa 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.

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**STORM WATER
MANAGEMENT BRANCH**

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.”

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:

Alabama Handbook	<u>Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management</u> , published by the Alabama Soil and Water Conservation Committee
BMPs	Best Management Practices
BMP Plan	Best Management Practices Plan
GP85	ADEM NPDES General Permit ALG850000
GP89	ADEM NPDES General Permit ALG890000
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

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

6. The Department reissued NPDES General Permit ALG890000 on September 29, 2022, effective February 1, 2023, establishing limitations on the discharges associated with noncoal/nonmetallic mining and dry processing, and areas associated with these activities, where such activities will result in a cumulative land disturbance of less than five (5) acres of land at any one time over the life of the mining activity.

7. The Department granted authorization under the 2023 GP89 ALG890895 to the Operator for RB Miller Property on November 6, 2023. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to unnamed tributaries to Beatty Branch, waters of the State. The GP89 expires on January 31, 2028.

8. Pursuant to Part I.A. of GP89, the Permit authorizes discharges associated with noncoal/nonmetallic mining and dry processing, and areas associated with these activities, where such

activities will result in a cumulative land disturbance of less than five (5) acres of land at any one time over the life of the mining activity.

9. Pursuant to Parts I.A. and I.D.3. of the GP89, discharges from any mining operation that at any time has a total area of land disturbance that equals or exceeds five (5) acres in size are prohibited.

10. Pursuant to Part II.C.1(f) and Part III.E.4(h) of GP89, the Operator shall identify all outfalls on the map submitted to the Department on the NOI and in the site-specific BMP Plan.

11. Pursuant to Parts III.A., III.C., III.E.3., and IV.D. of GP89, the Operator shall design, install, properly operate, and regularly maintain effective erosion controls and sediment controls, appropriate for site conditions. Sediment control measures, erosion control measures, and other site management practices must be properly selected based on site-specific conditions and must meet or exceed the technical standards outlined in the Alabama Handbook and the site-specific BMP Plan.

12. Pursuant to Part III.I.3. of the GP89, the Operator shall promptly take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.

13. During an inspection of the Facility on January 28, 2025, the Department observed and documented:

- a. A disturbed area exceeding 5 acres, in violation of GP89 Parts I.A. and I.D.3;
- b. Improper implementation and failure to maintain effective BMPs, in violation of GP89 Parts III.A, III.C, III.E.3, and Part IV.D.,
- c. The accumulation of sediment offsite, in violation of the GP89 Parts III.A.6., and III.I.3.;
- d. Three (3) unpermitted outfalls, in violation of the GP89 Parts II.C.1(f) and III.E.4(h);
- e. The NOI on file at the time of the inspection did not appear to correctly identify the site boundaries, areas of disturbance, and all receiving streams, in violation of the GP89 Parts II.C.1(f)(vi), III.E.4(h)(vii), and III.E.4(h)(viii).

14. On February 13, 2025, the Department issued an NOV to the Operator based on the findings of the January 28, 2025, inspection of the Facility. The NOV notified the Operator of violations documented

during the inspection and required the Operator to submit a report prepared and certified by a QCP to the Department within thirty days of receipt of the NOV. The report required the Operator to detail the steps taken to correct the violations noted in the NOV, including a schedule for reclamation of the site to less than five (5) acres, submission of an NOI requesting modification of the existing GP89 or the submittal of an NOI for issuance of a GP85, a revised copy of the BMP Plan, a complete survey of the site, copies of NPDES site inspections, a detailed sediment loss analysis and removal plan, and invoices for the erosion control materials and services used to correct the violations noted in the NOV.

15. On March 27, 2025, the Department received a response to the February 13, 2025, NOV. The response did not include the required permit modification, revised BMP Plan, copies of the requested inspection reports, or a complete detailed sediment loss evaluation and removal plan.

16. On April 16, 2025, the Department received a follow-up response to the February 13, 2025, NOV that included the QCP report, sediment loss evaluation and removal plan, and updated BMP Plan.

17. On April 25, 2025, the Department received the QCP certification report, copies of the requested inspection reports, detailed offsite sediment loss analysis and remediation plan, extension request for the site survey, and the requested invoices for the erosion control materials and services.

18. On May 5, 2025, the Department received the NOI requesting modification of the permit, to include the active mining area and add outfalls to the existing permit.

19. On May 23, 2025, the Department received the required site survey.

20. During an inspection of the Facility on June 24, 2025, the Department observed and documented improper implementation and failure to maintain effective BMPs, in violation of GP89 Parts III.A, III.E.3, and Part IV.D.

21. During this same inspection, the Department also observed and documented accumulation of sediment offsite, in violation of the GP89 Parts III.A.6., and III.1.3..

22. 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.

DEPARTMENT'S CONTENTIONS

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. 335-6-6 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 modification of the NPDES permit coverage 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 efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of 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 shall pay the Department a civil penalty in the amount of \$10,000.00 in settlement of the violations alleged herein, payable in ten, \$1,000.00 monthly installments. The first

installment shall be due within forty-five (45) days from the date of issuance of this Consent Order, with each subsequent payment due on the fifteenth (15th) of each month thereafter. Failure to pay the civil penalty within forty-five (45) days from the date of 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
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 Facility 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 five (5) days after the date of issuance of this Consent Order, have a comprehensive inspection conducted of the Facility, offsite conveyances, and affected State waters.

E. The Operator shall, within ten (10) days after the date of issuance of this Consent Order, submit to the Department a detailed sediment/solids loss analysis and plan for the removal, remediation, and/or mitigation of any sediment/solids and other pollutants from the Facility deposited offsite and in State waters.

F. The Operator shall begin the implementation of the plan for the removal, remediation, and/or mitigation of any sediment/solids and other pollutants from the Facility deposited offsite and in State waters within five (5) days of being notified of the Department's acceptance of the plan.

G. The Operator shall conduct the removal, remediation, and/or mitigation of any sediment/solids and other pollutants from the Facility deposited offsite and in State waters so that it is completed within twenty (20) days of being notified of the Department's acceptance of the plan.

H. The Operator shall submit a certification by a QCP that the removal, remediation, and/or mitigation of any sediment/solids and other pollutants from the Facility deposited offsite and in State waters

has been completed according to the approved plan. The certification shall be submitted within thirty (30) days of being notified of the Department's acceptance of the plan.

I. The Operator shall, within twenty (20) days after the date of issuance of this Consent Order, fully implement and maintain effective BMPs, implement all onsite plans required by this Consent Order, and correct all onsite deficiencies at the Facility. The BMPs shall meet or exceed the technical standards outlined in the Alabama Handbook, the site BMP Plan, and the GP89.

J. The Operator agrees, within thirty days (30) of the effective date of this Order, the Operator shall submit to the Department a certification, with photo-documentation, signed by a QCP that effective onsite BMPs that meet or exceed the technical standards outlined in the Alabama Handbook and the site BMP Plan, and the GP89 have been implemented, all onsite deficiencies have been corrected, and full compliance with the requirements of the GP89 has been achieved at the Facility.

K. 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.

L. 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.

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

N. 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 the 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 (10) 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 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.

O. 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 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.

P. 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.

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

R. 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.

S. 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.

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

U. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted as 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.

RB MILLER PROPERTIES, LLC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED;

Brad Miller
(Signature of Authorized Representative)

Edward F. Poolos, Director

Brad Miller
(Print Name of Authorized Representative)

Date Signed: _____

Owner Brad Miller
Title _____

Date Signed: 01/12/2026

Attachment 1

**RB Miller Properties LLC-RB Miller Property
Tuscaloosa County
ALG890895**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Discharging/Operating without a Permit/appropriate permit	1	\$3,000.00	\$1,500.00	
Failure to implement/maintain adequate BMPs	2	\$2,000.00	\$2,000.00	
Offsite Sediment	2	\$2,000.00	\$2,000.00	

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	\$500.00
Ability to Pay (-)	
Other Factors (+/-)	-\$3,000.00
Total Adjustments (+/-)	

\$7,000.00	\$5,500.00	\$0.00
Total (A)	Total (B)	Total (C)
Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$12,500.00
Mitigating Factors (-)		
Economic Benefit (+)		\$500.00
Ability to Pay (-)		
Other Factors (+/-)		-\$3,000.00
INITIAL PENALTY		\$10,000.00
Total Adjustments (+/-)		\$0.00
FINAL PENALTY		\$10,000.00

Footnotes

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