ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
T & T, Inc.	)	ORDER NO. - -WP
Dawes Dirt Pit	)	
Mobile, Alabama	)	
Mobile County, Alabama	)	
NPDES Permit No. AL0075787	)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), and the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. T & T, Inc. (hereinafter "Permittee") operates a mining facility known as the Dawes Dirt Pit (hereinafter "Pit") located in Mobile, Mobile County, Alabama. The Pit discharges pollutants from point sources into Turkey Creek and groundwater, waters of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0075787 (hereinafter "Permit") to the Permittee on

October 31, 2003, establishing limitations on the discharge of pollutants from a point source, designated therein as outfall 001, into Turkey Creek and groundwater, waters of the State. The Permit requires that the Permittee monitor its discharge and submit periodic Discharge Monitoring Reports (DMRs) to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. Part II.B.10.a of the Permit requires that the Permittee file a complete application for permit reissuance within at least 180 days prior to the Permit's expiration if the Permittee intends to discharge beyond the expiration date of the Permit. The expiration date of the Permit was October 31, 2008. Therefore, the Permittee's application was due to the submitted to the Department no later than May 4, 2008. The Department received an untimely application for the Permittee's Permit reissuance on February 11, 2009.

6. As set forth in ADEM Admin. Code r. 335-6-6-.06, the terms and conditions of an expiring NPDES permit are automatically extended pending issuance of a new permit if the Permittee has submitted a timely and complete application for reissuance of its NPDES permit and if any subsequent delay in permit issuance is not caused by the actions of the Permittee.

7. Part II.B.10.b of the Permit states that "Failure of the Permittee to apply for permit reissuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Administrative Code Rule 335-6-6-.06 and, should the permit not be reissued for any reason, any discharge after discharge of this permit will be an unpermitted discharge."

8. The Department did not receive a timely and complete permit application from the Permittee as provided above. Therefore, the Permittee's Permit expired on October 31, 2008. As a result of the Permit expiration, all discharges from outfall 001 to Turkey Creek and groundwater have been unpermitted since November 1, 2008. Any further discharges will remain unpermitted until the date of the Permit reissuance.

9. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on January 7, 2009, that addressed the Pit's unpermitted status.

10. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), 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 the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than $100.00 or 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 VIOLATION: The Permittee violated its Permit by failing to submit a timely application for permit renewal due to permit expiration. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B. THE STANDARD OF CARE: The Permittee failed to achieve compliance with the terms and conditions of the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit to the Permittee as a result of these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known effects on the environment as a result of the violations addressed by this Order.

E. HISTORY OF PREVIOUS VIOLATIONS: Historical violations were considered in the development of the civil penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of $3,000.00 for the violations stated herein.

B. That all penalties due pursuant to this 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. That the Permittee shall comply with all terms, limitations, and conditions of NPDES Permit Number AL0075787 that expired on October 31, 2008, until such time as the reissued Permit becomes effective. The Permittee must comply with all terms, limitations, and conditions of the reissued Permit beginning on the effective date of that Permit.

D. That this Order must not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

E. That final approval and issuance of this 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.

F. 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.

G. 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 the Permittee of its obligations to comply in the future with any permit.

H. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

I. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

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Onis "Trey" Glenn, III
Director