ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

RECEIVED
FEB 2016
LAND DIVISION

IN THE MATTER OF:	)
	)
Jim Walter Resources, Inc.	)
Old Mine 4 UAD	)
Brookwood, Tuscaloosa County, Alabama	)**CONSENT ORDER NO. 16-XXX-CSW**
	)
	)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Jim Walter Resources, Inc. (hereinafter, "Jim Walter") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Solid Wastes and Recyclable Materials Management Act , Ala. Code §§22-27-1 to 22-27-18, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Jim Walter is the owner of parcel 63-22-01-12-0-000-004.000 located off Davis Road (hereinafter "Old Mine 4") in Brookwood, Tuscaloosa County, Alabama, and is responsible for the creation of an unauthorized dump which is the subject of this Order.

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

3. The Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act , Ala. Code §§22-27-1 to 22-27-18, as amended.

4. Ala. Code §§22-27-2(36), as amended, defines an "unauthorized dump" as "any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department."

5. Ala. Code §§22-27-4(b), as amended, states the following: "The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined..."

6. Ala. Code §§22-27-10(b), as amended, states the following: "The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article."

7. ADEM Admin. Code r. 335-13-1-.13 (1)(a) declares that open or unauthorized dumps are prohibited.

DEPARTMENT'S CONTENTIONS

8. On September 30, 2015, the Department was notified by the Alabama Surface Mining Commission (hereinafter "ASMC") of a potential unauthorized dump within two mining footprints of Jim Walter in Brookwood, Tuscaloosa County.

9. On October 21, 2015, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter "UAD") located on the property of Jim Walter at Old Mine 4, Brookwood, Tuscaloosa County, Alabama (at or near GPS location Latitude 33.3187, Longitude -87.3334). The Department determined that Jim Walter was responsible for the creation and operation of the UAD. The UAD consisted of wooden pallet waste, scrap metal and plastic waste.

10. 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. 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 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: Jim Walter did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Jim Walter failed to abide by applicable solid waste disposal requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Jim Walter has realized a significant economic benefit as a result of the violations listed above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Jim

Walter to mitigate any potential effects upon the environment and human health that may have been caused as a result of the unauthorized solid waste dump.

E. HISTORY OF PREVIOUS VIOLATIONS: Jim Walter has no history of previous violations of applicable solid waste requirements.

F. THE ABILITY TO PAY: Jim Walter has not alleged an inability to pay the civil penalty; however the company filed for Chapter 11 bankruptcy protection on July 15, 2015.

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.

11. 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 has concluded that a civil penalty in the amount of $12,500.00 is appropriate. The civil penalty is summarized in Attachment A.

12. The Department neither admits nor denies Jim Walter'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.

JIM WALTER'S CONTENTIONS

13. Jim Walter neither admits nor denies the Department's contentions. On May 9, 1985, Jim Walter received a letter from the Department approving the disposal of non-hazardous, non-putrescible solid waste intermixed with coal mine spoil at the existing mines in Jefferson and Tuscaloosa counties. Jim Walter consents to abide by the terms of this Consent Order and to pay the stipulated civil penalty assessed herein.

ORDER

THEREFORE, Jim Walter, 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 has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Jim Walter agree to enter into this ORDER with the following terms and conditions:

A. Jim Walter shall pay to the Department a civil penalty in the amount of $12,500.00 for the violations cited herein. The penalty 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

All checks shall reference Jim Walter's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Jim Walter shall cease and desist from operating an UAD.

C. That, within sixty (60) days of the issuance of this Order, Jim Walter shall submit a closure plan to the Department in accordance with ADEM Admin. Code Div. 335-13. This plan shall include a schedule for abatement completion. Once approved by the Department, Jim Walter shall implement the abatement plan and shall submit adequate documentation of proper site closure for the site. Jim Walter may assign the relevant property. Upon completion of the abatement plan and submittal of adequate documentation by Jim Walter or its assign, the Department will issue a letter of concurrence.

D. Jim Walter agrees to comply with the terms, limitations, and conditions of the Department's regulations immediately upon the effective date of this Consent Order and every day thereafter.

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. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

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 Jim Walter, 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 Commission) 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 Jim Walter, 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.

H. The Department and Jim Walter 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 property 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 Jim Walter 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.

I. The Department and Jim Walter 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 Jim Walter does hereby waive any hearing on the terms and conditions of same.

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

K. The Department and Jim Walter 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.

L. The Department and Jim Walter 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.

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

N. The Department and Jim Walter 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 the Commission of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Jim Walter Resources, Inc.

(Signature of Authorized Representative)

Richard A Donnelly
(Printed Name)

President
(Printed Title)

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Date Signed

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed

Attachment A

Old Mine 4 UAD
Brookwood, Tuscaloosa County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations *	
Creation of an unauthorized dump	1	$14,000.00	$1,000.00		
					Total of Three Factors
TOTAL PER FACTOR		*$14,000.00*	*$1,000.00*	*$0*	*$15,000*

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	**$0**
Ability to Pay (-)	**$0**
Other Factors (+/-)	**$0**
Total Adjustments (+/-) ***Enter at Right***	$0

Economic Benefit (+)	$0
Amount of Initial Penalty	$15,000
Total Adjustments (+/-)	$2,500
FINAL PENALTY	$12,500

Footnotes

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