

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
D.C. Mining, Inc.)
11651 County Road 64)
Daphne, Baldwin County, Alabama)
)
Unpermitted)

Unilateral Order No. XX-XXX-WP

FINDINGS

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 (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol), and the regulations promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter “the Department”) makes the following FINDINGS:

1. D.C. Mining, Inc. (hereinafter “the Operator”) operates a sand and gravel mining facility (hereinafter “the Mine”). The Mine is located at 11651 County Road 64 in Daphne, Baldwin 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-17, as amended.

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 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. The Department issued National Pollutant Discharge Elimination System (hereinafter “NPDES”) Permit No. AL0080373 (hereinafter “the Permit”) to Crossroads, LLC on September 28, 2009, effective October 1, 2009, establishing limitations on the discharges of pollutants from a point source, designated therein as outfall number 001, into Fish River, a water of the state.

5. Crossroads, LLC notified the Department on September 4, 2014, and July 1, 2015,

that the Mine had been sold to the Operator in September of 2012.

6. The Permit expired on September 30, 2014.

7. The Department issued a Notice of Violation (hereinafter "NOV") to the Operator on October 8, 2015, requiring the Operator to submit to the Department, within thirty days of receipt of the NOV, a complete and correct application requesting coverage under the NPDES Sand and Gravel General Permit.

8. Ala. Code § 22-22-9(e) requires that a person respond to a Notice of Violation within such time as specified by the Department. The Operator failed to respond to the NOV within the specified time frame, in violation of Ala. Code § 22-22-9(e).

9. ADEM Admin. Code r. 335-6-9-.05(1) states that "[a]ll surface mining operations must have an NPDES permit issued by the Department pursuant to this chapter."

10. The Department conducted an inspection of the Mine on January 21, 2016, and observed that the Operator was conducting surface mining operations without coverage under an NPDES permit, in violation of ADEM Admin. Code r. 335-6-9-.05(1).

11. 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, 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:** Violations of ADEM Admin. Code div. 335-6 and the AWPCA were noted. Violations consisted of conducting surface mining operations without a permit and failing to respond to a NOV within the specified time

period. 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: The Department considers the violations non-technical and easily avoidable. In consideration of the standard of care manifested by the Operator, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator avoided certain costs associated with applying for a permit and responding to an NOV. The Department has determined that delayed compliance conferred an economic benefit upon the Operator, and therefore 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 alleged an inability to pay the civil penalty.

G. The civil penalty is summarized in Attachment 1.

ORDER

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

A. The Operator shall pay to the Department a civil penalty in the amount of **\$17,820.00** in settlement of the violations alleged herein within forty-five days from the issuance date of this Order. Failure to pay the civil penalty within forty-five days from the issuance date 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 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. The Operator shall take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants from leaving the Mine and to prevent unpermitted discharges of pollutants to waters of the State.

D. The Operator shall prepare and submit to the Department, within thirty days after the issuance of this Order, a complete application (including fees) for an NPDES individual mining permit for facilities over five acres. If the Department comments that modifications to the application package are required, the Operator shall submit such modifications to the Department so that they are received no later than thirty days after the Operator's receipt of the Department's comments.

E. For purposes of this 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 Order, the Operator shall be limited to the defenses of *Force Majeure*, compliance with this Order 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 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. 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.

F. This Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

G. Final approval and issuance of this Order are subject to the requirements 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.

H. 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.

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

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

K. Failure to comply with the provision of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

ATTACHMENT 1

PENALTY CALCULATION WORKSHEET

D.C. Mining, LLC

Unpermitted

| Violation* | Number of Violations* | (A) | (B) | (C) | | | | | | | | | | |
|--|-----------------------|---------------------------|-------------------|---------------------------------|--|--------------------|--|---------------------|--|--------------------------------|--------|---|--------------------------------|--------|
| | | Seriousness of Violation* | Standard of Care* | History of Previous Violations* | | | | | | | | | | |
| Conducting Mining Operations Without an NPDES Permit | 1 | \$ 3,000.00 | \$ 1,500.00 | \$0 | | | | | | | | | | |
| Failure to Respond to an NOV | 1 | \$ 3,000.00 | \$ 1,500.00 | \$0 | | | | | | | | | | |
| | | \$6,000.00 | \$3,000.00 | \$0 | | | | | | | | | | |
| | | Total (A) | Total (B) | Total (C) | | | | | | | | | | |
| Base Penalty Total [Total(A) + Total(B) + Total(C)] | | | | \$9,000.00 | | | | | | | | | | |
| Mitigating Factors (-) | | | | \$0 | | | | | | | | | | |
| Economic Benefit (+) | | | | \$8,820.00 | | | | | | | | | | |
| Ability to Pay (-) | | | | \$0 | | | | | | | | | | |
| Other Factors (+/-) | | | | \$0 | | | | | | | | | | |
| INITIAL PENALTY | | | | \$17,820.00 | | | | | | | | | | |
| Additional Adjustments due to negotiations, receipt of additional information, or public comment <table border="1"> <tr> <td>Mitigating Factors (-)</td> <td></td> </tr> <tr> <td>Economic Benefit (+)</td> <td></td> </tr> <tr> <td>Ability to Pay (-)</td> <td></td> </tr> <tr> <td>Other Factors (+/-)</td> <td></td> </tr> <tr> <td>Total Adjustments (+/-)</td> <td align="right">\$0.00</td> </tr> </table> | | Mitigating Factors (-) | | Economic Benefit (+) | | Ability to Pay (-) | | Other Factors (+/-) | | Total Adjustments (+/-) | \$0.00 |  | Total Adjustments (+/-) | \$0.00 |
| Mitigating Factors (-) | | | | | | | | | | | | | | |
| Economic Benefit (+) | | | | | | | | | | | | | | |
| Ability to Pay (-) | | | | | | | | | | | | | | |
| Other Factors (+/-) | | | | | | | | | | | | | | |
| Total Adjustments (+/-) | \$0.00 | | | | | | | | | | | | | |

Footnote

***See the "Findings" of the order for a detailed description of each violation and the penalty factors.**