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DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
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Montgomery, Alabama 36130-1463
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OCT 17 2014

CERTIFIED MAIL 91 7199 9991 7030 3432 7364
RETURN RECEIPT REQUESTED

JEFF CLARK
PO BOX 36
BERRY AL 35546

RE: Final Consent Order No. 15-003-CWP
DC Gravel
Expired NPDES Permit No. ALR16EH66
Fayette County (057)

Dear Mr. Clark:

Please find the enclosed Special Order by Consent which requires you to take certain actions in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Jeff Clark. The effective date of this Order is October 17, 2014.

Should you have any questions regarding the order please contact Mr. Jarrett Thomas at (334) 271-7850 or by email at jthomas@adem.state.al.us.

Sincerely,

Glenda L. Dean

Glenda L. Dean, Chief
Water Division

GLD/dpm

File: ECO/35918

Enclosure

cc: Thomas L. Johnston, ADEM
Valerie Jackson, ADEM
Scott Hughes, ADEM

Jeff Kitchens, ADEM
Dale P. Mapp, ADEM
Jarrett Thomas, ADEM

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

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2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
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ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

JEFF CLARK

DC GRAVEL

BERRY, T14N, R11E, S33

FAYETTE COUNTY, ALABAMA

EXPIRED NPDES REGISTRATION NO. ALR16EH66

CONSENT ORDER 15-003-CWP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Jeff Clark (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), 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, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Operator is an Alabama resident operating the DC Gravel site (hereinafter "Facility") located on Milton Road, 0.3 miles from CR 49 in Berry, Fayette County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to Mill Creek, a water of the State.

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. 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 AWPCA.

DEPARTMENT'S CONTENTIONS

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
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional

5. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On January 31, 2013, under ADEM Admin. Code r. 335-6-6-.23, the Department issued General Permit ALG890000 (herein after "the General Permit") for less than five acre mining activities. The General Permit became effective February 1, 2013.

7. On July 18, 2012, the Department issued NPDES coverage for the Facility under ALR16EH66. This coverage expired on July 17, 2013. The Department received an incomplete NOI requesting coverage under the General Permit on October 2, 2013.

8. On January 21, 2014, the Operator indicated to the Department that he no longer wished to obtain permit coverage for the Facility and requested that he be able to reclaim the Facility. The Department granted the Operator's request and required that he update the Department on reclamation progress by February 20, 2014, and that he fully reclaim the Facility by March 21, 2014. The Department also reminded the Operator that full reclamation meant that the Facility must have 100% coverage and 85% density of vegetation. The Operator did not meet either of these deadlines.

9. During an inspection of the Facility on April 9, 2014, the Department documented that the Operator was operating without permit coverage, in violation of ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1).

10. ADEM Admin. Code r. 335-6-12-.21(1) provides that "commencement and/or continuation of NPDES construction activity is prohibited . . . unless effective BMPs are implemented and maintained in accordance with a CBMPP prepared/certified by a QCP as

adequate to meet the requirements of ADEM Admin. Code chap. 335-6-12 and applicable requirements of ADEM Administrative Code Division 335-6.” The CBMPP 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 (hereinafter the “Alabama Handbook”).

11. During an inspection of the Facility on April 9, 2014, the Department documented that the Operator had not properly implemented and maintained effective BMPs throughout the site, in violation of ADEM Admin. Code r. 335-6-12-.21(1).

12. ADEM Admin. Code r. 335-6-12-.35(10) requires operators to promptly take all reasonable steps to determine the nature and impact of non-complying discharges, and to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody.

13. Pursuant to ADEM Admin. Code r. 335-6-6-.03, no person shall discharge pollutants into a water of the State without first obtaining valid NPDES coverage.

14. During the inspection of the Facility on April 9, 2014, the Department observed and documented sediment leaving the Facility and being deposited on an adjacent property, in violation of ADEM Admin. Code rs. 335-6-12-.35(10) and 335-6-6-.03.

15. Pursuant to ADEM Admin. Code r. 335-6-12-.26(4), precipitation shall be measured and recorded using continuous records, daily readings of an onsite rain gauge, or daily readings of an offsite precipitation gauge located adjacent to or in close proximity to the facility. Pursuant to ADEM Admin. Code r. 335-6-12-.05(5), the Operator shall post and maintain sign(s) at the front gate/entrance...and/or at other easily accessible location(s) to adequately identify the site prior to commencement of and during NPDES construction until registration is properly terminated.

16. During the inspection of the Facility on April 9, 2014, the Department observed and documented that there was no rain gauge or facility identification sign onsite, in violation of ADEM Admin. Code rs. 335-6-12-.26(4) and 335-6-12-.05(5).

17. 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.

OPERATOR'S CONTENTIONS

18. Reserved for the Operator's contentions.

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

PENALTY FACTORS

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 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 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:** The Department noted violations of ADEM Admin. Code div. 335-6 and the AWPCA. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or

threat to the public.

B. THE STANDARD OF CARE: The Department noted violations, such as the timely submittal of the complete and correct NOI, were non-technical requirements and easily avoidable. The Department also noted the Operator's failure to fully reclaim the Facility by March 21, 2014, as agreed upon by the Department and the Operator.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator has delayed certain costs associated with obtaining/maintaining proper NPDES coverage. However, the Department is not aware of evidence that these delays resulted in a significant economic benefit.

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 not otherwise addressed above.

F. THE ABILITY TO PAY: The Department has received evidence and/or information that indicates that the Permittee has an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement between the Department and the Operator. Therefore, in the spirit of cooperation and the desire to resolve this matter amicably and without incurring the unwarranted expense of litigation, the Department has determined the amount of the penalty it believes is warranted in the matter (summarized in Attachment 1).

ORDER

The Operator and the Department desire to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department as well as the need for timely and effective enforcement. The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the

Department and the Operator agree to enter into this Consent Order with the following terms and conditions:

A. The Operator shall take immediate 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.

B. The Operator shall, upon the effective date of this Order, fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site BMP Plan, and ADEM Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, and if determined necessary, sediment removal or remediation.

C. Within 100 days of the effective date of this Order, the Operator shall fully implement all necessary measures to ensure that all disturbed areas have been fully reclaimed and permanently stabilized, and that stormwater discharges do not represent an adverse impact to water quality. Additionally, within 100 days of the effective date of this Order, the Operator shall submit to the Department a complete Notice of Termination on ADEM Form 499, including all required inspection reports, requesting termination of the registration for the Facility.

D. After the effective date of this Consent Order, the Operator shall pay stipulated penalties for each day it fails to meet any of the milestone dates or to satisfy any of the requirements set forth in or established by Paragraph C. contained herein or any other requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1 st to 30 th day	\$100
31 st to 60 th day	\$200
After 60 days	\$300

E. The cumulative stipulated penalties described in Paragraph D. above shall under no circumstances exceed \$12,000.00. Once stipulated penalties of \$12,000.00 are due to the Department and violation(s) continue to occur, then the Department shall be free to issue

additional orders or to file suit against the Operator in the Circuit Court of Montgomery County or in another court of competent jurisdiction to enforce compliance of this Consent Order.

F. The Operator shall submit payment of stipulated penalties, as described in Paragraph D. above, to the Department so that they are received by the Department no later than thirty days following the completion of the milestone or requirement. Notification to the Operator by the Department of the assessment of any stipulated penalty is not required.

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 the Operator's 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 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 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 the Department 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 Facility 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 the Operator 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.

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 or regulations.

N. 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 herein shall remain in full force and effect.

and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

Executed in duplicate with each part being an original.

JEFF CLARK



(Signature of Authorized Representative)

Jeff Clark

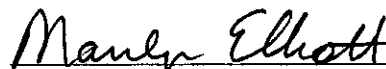
(Print Name of Authorized Representative)

Owner

Title

Date Signed: 10-6-2014

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Lance R. LeFleur
Director

Date Signed: 10-17-14

Attachment A

**Jeff Clark - DC Gravel
Berry, Fayette County
Expired NPDES ALR16EH66**

Violation*	Number of Violations*	(A)	(B)	(C)										
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*										
Failure to implement adequate BMPs	1	\$ 2,500.00	\$ 1,250.00											
Failure to maintain adequate BMPs	1	\$ 500.00	\$ 250.00											
Failure to operate in accordance with ADEM rules	1	\$ 1,000.00	\$ 500.00											
Operating without a permit	1	\$ 3,000.00	\$ 1,500.00											
Discharge of sediment/offsite sediment	1	\$ 5,000.00	\$ 2,500.00											
		\$12,000.00	\$6,000.00	\$0.00										
		Total (A)	Total (B)	Total (C)										
<div>Additional Adjustments due to negotiations, receipt of additional information, or public comment</div> <table><tr><td>Mitigating Factors (-)</td><td></td></tr><tr><td>Economic Benefit (+)</td><td></td></tr><tr><td>Ability to Pay (-)</td><td>-\$18,000.00</td></tr><tr><td>Other Factors (+/-)</td><td></td></tr><tr><td>Total Adjustments (+/-)</td><td>-\$18,000.00</td></tr></table>		Mitigating Factors (-)		Economic Benefit (+)		Ability to Pay (-)	-\$18,000.00	Other Factors (+/-)		Total Adjustments (+/-)	-\$18,000.00	Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$18,000.00
		Mitigating Factors (-)												
		Economic Benefit (+)												
		Ability to Pay (-)	-\$18,000.00											
		Other Factors (+/-)												
Total Adjustments (+/-)	-\$18,000.00													
		Mitigating Factors (-)												
		Economic Benefit (+)												
		Ability to Pay (-)												
		Other Factors (+/-)												
		INITIAL PENALTY	\$18,000.00											
		Total Adjustments (+/-)	-\$18,000.00											
		FINAL PENALTY	\$0.00											

Footnotes

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