

ALABAMA DEPARTMENT OF  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )

S & S SAND AND GRAVEL, INC. )

BAY MINETTE, ALABAMA )

NPDES PERMIT NOS. AL0064033 AND )

AL0068641 )

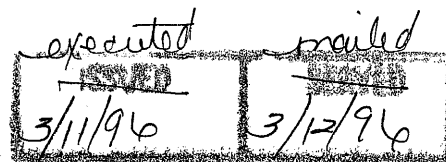
CONSENT ORDER NO. 96-056-CWP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16 and the Alabama Water Pollution Control Act. Code of Alabama (1975), §§ 22-22-1 through 22-22-14, the regulations promulgated thereto and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, §402, 33 U.S.C. §1342, and without the adjudication of any issues of fact or law and upon the Consent of the parties hereto, the Department makes the following FINDINGS:

1. S & S Sand and Gravel, Inc., (hereinafter "S & S" or "the Permittee") operates three sand and gravel mines with wet preparation plants and associated areas in Alabama, all three of which discharge wastewaters to waters of the State.

2. On 6/1/1992 the Department issued NPDES Permit No. AL0064033 (hereinafter, "the Lenox Permit") for wastewater discharges from the Lenox Pit in Conecuh County, Alabama.



3. On 5/1/1995 the Department issued NPDES Permit No. AL0068641(hereinafter, "the Cook Permit") for wastewater discharges from Cook Pit No. 1 in Monroe County, Alabama.

4. Ward Pit No 1, in Escambia County, Alabama, has no permit for wastewater discharges.

5. The Department contends the Permittee violated the Lenox Permit by discharging without subsurface withdrawal, by failing to maintain sedimentation structures, by discharging untreated mining wastewaters from an unpermitted area, and by failing to submit discharge monitoring reports (hereinafter, "DMR's") from the first quarter 1994 through the first quarter of 1995. The Department issued Notices of Violation to the Permittee for the foregoing violations of the Lenox Permit on 3/11/94, 10/21/94, 12/21/94, 1/30/95, 3/13/95, and 6/30/95. The Permittee did not respond to the foregoing Notices of Violation.

6. The Department contends the Permittee violated the Cook Permit by failing to submit any DMR's since the Permit was issued, and by failing to certify the construction of the discharge outfall, by failing to implement and maintain Best Management Practices for the control of wastewater discharges, and by discharging without subsurface withdrawal

7. The Department contends S & S discharged unpermitted wastewaters from the Ward Pit in violation of the Alabama Water Pollution Control Act.

8. S & S, in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and the Permits, and without any admission of liability, has agreed to the terms of the following Consent Order.

9. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONSENT ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(12), 22-22A-5(18), 22-22-9(I), and 22-22-9(k), the Department hereby Orders:

A. That the Permittee will pay to the Department Fifteen Thousand Dollars (\$15,000.00) in ten equal installments of One-Thousand Five-Hundred Dollars (\$1,500.00), the first payment being due no later than April 1, 1996 and remaining installments due the first of each month respectively, with the final installment due no later than January 1, 1997, until the entire amount is paid in full. The Department may file suit in the Circuit Court of Montgomery County, Alabama to collect the entire unpaid amount of the penalty if any payment becomes in default and is not made before 5:00 pm of the fifth day following a scheduled due date. The Department shall take no action to collect the penalty as long as payments are made when scheduled.

B. That, at the Lenox Pit, the Permittee will:

1. immediately and hereafter take all necessary measures to eliminate unpermitted discharges from the mine to waters of the State;
2. submit a complete application and correct fees to modify the permit to include those mined areas not covered by the Lenox Permit in addition to a complete sediment control structures Certification Report for the presently unpermitted outfall prepared by a Professional Engineer registered in the State of Alabama within 20 days of receipt of this Consent Order;
3. immediately implement and hereafter maintain Best Management Practices as required by the Permit;

4. immediately and hereafter comply with all other terms, conditions and limitations of the Lenox Permit;

5. submit a plan prepared by a Professional Engineer registered in the State of Alabama for the remediation of all downgradient areas affected by unpermitted discharges from the site within 20 days of receipt of this Consent Order.

C. That, at Cook Pit No. 1, the Permittee will:

1. submit the complete Sediment Control Structures Certification Report for outfall 001 prepared by a Professional Engineer registered in the State of Alabama within 10 days of receipt of this Consent Order;

2. immediately implement and hereafter maintain Best Management Practices as required by the Cook Pit Permit;

3. immediately and hereafter comply with all other terms, conditions and limitations of the Permit, including but not limited to the subsurface withdrawal requirement for the outfall.

D. That at the Ward Pit No. 1, S & S will:

1. immediately and hereafter cease all unpermitted discharges of wastewaters to waters of the State;

2. submit the appropriate application processing fees and a complete and accurate application to take into account the actual conditions at the site, including an updated Pollution Abatement Plan within 20 days of receipt of this Consent Order;

3. immediately implement and hereafter maintain Best Management Practices;

4. submit a plan prepared by a Profession Engineer registered in the State of Alabama for the remediation of all downgradient areas affected by unpermitted discharges from this site within 20 days of receipt of this Consent Order;

5. implement spill prevention control and countermeasures for any onsite fuel tank pending issuance of the permit.

E. That S & S will immediately and hereafter cease and desist from discharges of unpermitted pollutants to waters of the State from any other operations now or ever operated by S & S.

F. That S & S will, from this point forward, submit applications for new sources, permit reissuance or permit modifications at least 180 days prior to the applicant's desired date for commencement of the new discharge or 180 days prior to the expiration of the current permit.

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 the 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 alleged in this Order.

I. That S & S is not relieved from any liability if it fails to comply with any provision of this Consent Order.

J. For purposes of this Order only, S & S agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including but not limited to the Circuit Court for Montgomery County, Alabama. S & S also agrees in any action brought by the Department to compel compliance with the terms of the Agreement, S & S shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility.

K. The sole purpose of this Consent Order is to resolve and dispose of all allegation 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 Order, then such future violations shall be addressed in Order as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and S & S not object to such future orders, litigation, or enforcement action based upon the issuance of this Order if future Orders, litigation or other enforcement actions address new matters not raised in this Order.

L. By agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and S & S hereby waives any right to a conference prior to the issuance of the Order or any right to a hearing before the Environmental Management Commission.

S & S SAND AND GRAVEL, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: Carl E Stewart

By: Jim Wilkin

DATE: March 11, 1996

DATE: 11 March 96