

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

WAYNE SELLERS)
SELLERS DIRT PIT)
T1S R2E S38)
BALDWIN, ALABAMA)
NPDES # AL0074161)
_____)

CONSENT ORDER NO. 03-126-CMNPS

FINDINGS

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



1. Wayne Sellers, (hereinafter "the Operator") operates a sand and gravel mining facility (hereinafter "the facility"), located at T1S, R2E, S28, in the city of Stockton, Baldwin County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), § 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the State agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the FWPCA. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. On July 19, 2001, ADEM Consent Order No. 01-177-CMNPS, was issued to the Operator for failing to obtain NPDES permit coverage prior to conducting mining activities and failure to implement Pollution Abatement/Prevention controls to protect water quality. The Consent Order also assessed a penalty in the amount of \$2,500.

5. On August 31, 2001, the Operator was issued NPDES permit coverage (AL0074161) by the Department for discharges of treated effluent from the facility.

6. The facility discharges treated effluent to Rains Creek, classified for Fish and Wildlife, and to groundwater, both of which are waters of the State.

7. An inspection of the facility conducted by ADEM personnel on September 5, 2002, resulted in the following deficiencies:

- a. Existing pollution control structures and implementation of management practices did not appear to be consistent with the approved Pollution

Abatement/Prevention (PAP) plan on file with the Department, as required by the permit.

- b. Adequate Best Management Practices (BMPs) have not been implemented for the control of nonpoint source pollution from access/haul roads.
- c. Outfall 001P has been constructed and is receiving drainage from disturbed areas. However, ADEM records indicate that certification by the design engineer has not been received by the Department.
- d. An acceptable method of subsurface withdrawal of discharges has not been implemented at outfall 001P as required by the permit.
- e. Debris, trash, and other solid waste materials have not been managed as required by the permit to prevent potential discharge of such materials and associated pollutants into waters of the State.
- f. All drainage is not routed through an approved, permitted outfall as required by the permit.
- g. Unpermitted discharge of pollutants from a seep at the toe of the dam associated with outfall 001P.

8. The Operator neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AWPCA, the Operator has consented to the terms of this Consent Order.

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

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i), as amended, and with the consent of the Operator, it is hereby ORDERED:

A. That, not later than thirty (30) days after the execution date of this Consent Order, the Operator shall pay to the Department a civil penalty in the amount of Two-Thousand dollars (\$2,000) for the violations cited herein. In determining the amount of the penalty amount set forth herein, the Department considered the statutorily prescribed factors set forth at Code of Alabama (1975), § 22-22A-5(18)(c), as amended.

B. That all penalties due pursuant to this Consent 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 Operator shall immediately, upon the date of execution of this Consent Order and continuing thereafter shall insure immediate and future compliance with the AWPCA, ADEM rules, and all NPDES permit limitations, terms, and conditions

for all sites/facilities, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order.

D. That within fifteen (15) days after the execution of this Consent Order, the Operator shall perform a comprehensive evaluation of this facility and its associated receiving water(s).

E. That, within thirty (30) days after the execution of this Consent Order, the Operator shall review, update and resubmit for ADEM acceptance a detailed, comprehensive Pollution Abatement/Prevention Plan (PAP) and/or Best Management Practice (BMP) plan as appropriate, for this facility, that is prepared and certified by a Professional Engineer (PE) registered in the State of Alabama.

F. That within sixty (60) days from the date of execution of this Consent Order, the Operator shall implement the PAP plan and/or BMP plan referenced in Paragraph E. above, in order to correct any deficiencies.

G. That within sixty-five (65) days from the date of execution of this Consent Order, a PE shall certify, on an ADEM approved form, that all work required in Paragraphs D and E has been accomplished and all deficiencies have been corrected by the Operator, and that the Operator is in compliance with the AWPCA and applicable NPDES rules.

H. 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.

I. That, 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.

J. That the Operator is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. That, for purposes of this Consent Order only, the Operator 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, Montgomery County Circuit Court. The Operator also agrees that 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 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 be beyond the reasonable control of the Operator) and which delays or prevents performances 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 (10) 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 specific circumstances.

L. 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 facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall 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.

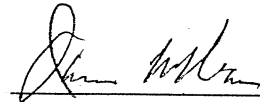
M. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

WAYNE SELLERS

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Name of Authorized Representative)


James W. Warr
Director

Owner
Title

Date Signed: May 22, 2003

Date Signed: 29 May 2003