

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Field Operations: 272-8131

Laboratory: 277-6718

Mining: 394-4326

March 1, 2007

CERTIFIED MAIL

7000 1530 0000 6471 8950

JON KYLE INGLE

QUALITY COAL CO INC

PO BOX 2705

JASPER AL 35502

RE: CONSENT ORDER 07-081-CMNPS

Blue Creek Mine

T13S, R10W, S3, 4, 8, 9, 10, 15, 17

NPDES AL0076678

Walker County

McCollum Mine

T14S, R8W, S9, 10, 15, 16

NPDES AL0073393

Walker County

Dear Mr. Ingle:

Please find enclosed the above-referenced Consent Order which requires certain actions to be taken regarding alleged violations of applicable environmental laws and regulations. This Consent Order has been issued with the consent of the Operator and the Department.

Should you have any questions concerning this matter, please contact **Darby Clark, Mining Unit, Mining & Nonpoint Source Section**, by email at dclark@adem.state.al.us or by phone at (334) 394-4306.

Sincerely,


Steven O. Jenkins, Chief
Field Operations Division

soj/dc

File:ECO/23639

ECO/15841

c: Water Management Division, EPA Region IV
Office of Public Affairs, ADEM

Enclosure: Signed Original Consent Order



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

QUALITY COAL CO., INC.)

BLUE CREEK MINE)

ELDRIDGE; T13S, R10W, S3, 4, 8, 9, 10, 15, 17)

WALKER COUNTY, ALABAMA)

NPDES AL0076678)

CONSENT ORDER 07-081-CMNPS

McCOLLUM MINE)

JASPER; T14S, R8W, S9, 10, 15, 16)

WALKER COUNTY, ALABAMA)

NPDES AL0073393)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Quality Coal Co., Inc. (hereinafter "Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (1997 Rplc. Vol. and 2006 Cum. Supp.), Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (1997 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 corporation and operates the following surface coal mines: Blue Creek Mine and McCollum Mine (hereinafter "Facilities") located near Eldridge and Jasper, Alabama, respectively.

2. The following acronyms are used in this Consent Order and, when used, shall have the meaning of the name or title referenced below.

ASMC	Alabama Surface Mining Commission
BMPs	Best Management Practices
DMR	Discharge Monitoring Report
Fe	Iron
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PE	Professional Engineer licensed to practice in the State of Alabama
SPCC	Spill Prevention Control and Countermeasures
TSS	Total Suspended Solids
WL	Warning Letter

3. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2006 Cum. Supp.).

4. On August 31, 2004, the Operator was issued NPDES permit coverage AL0076678 by the Department for discharges of treated effluent from the Blue Creek Mine to Trinity Creek, an unnamed tributary to Mallards Creek, unnamed tributaries to Mill Creek, and unnamed tributaries to Lost Creek, all classified as suitable for Fish & Wildlife. The NPDES permit is scheduled to expire August 31, 2009.

5. On December 20, 2005, NPDES permit coverage AL0073393 for the McCollum Mine was transferred to the Operator. Reissued March 31, 2005, the permit is for discharges of treated effluent to Burton Creek, Queen Branch, and an unnamed tributary to Lost Creek, all classified as suitable for Fish & Wildlife. The NPDES permit is scheduled to expire March 31, 2010.

6. Part II, B.,1.,a. of the Facilities' NPDES permits AL0076678 and AL0073393 (hereinafter "Permits") requires the Operator to comply with all terms and conditions of the Permits.

7. Part I,B. of the Permits, in part, requires the Operator to sample and analyze the discharge(s) for the pollutants/parameters specified in Part I,A. of the Permits from all existing outfalls a minimum of once every other week, but the Operator need not sample more than twice per month. The Permits also require the Operator to report the results of the analyses to the Department quarterly. The analytical results are required to be reported on an approved DMR form and to be submitted to the Department prior to the 28th day of the month following the applicable reporting period.

8. Since December 2005, the Operator has reported a total of thirty-five (35) separate effluent limit violations of the Permits.

Blue Creek Mine

Date	Parameter	Permit Limit	Outfall	Discharge
09/2006 avg.	Fe	3.0 mg/L	004	10.65 mg/L
09/2006 avg.	TSS	35 mg/L	004	144.50 mg/L
09/2006 avg.	Fe	3.0 mg/L	003	6.42 mg/L
09/2006 avg.	TSS	35 mg/L	003	103.50 mg/L
09/27/06 max.	pH	9.0 s.u.	004	10.18 s.u.
09/13/06 max.	TSS	70 mg/L	004	275 mg/L
09/13/06 max.	Fe	6.0 mg/L	004	20.95 mg/L
09/13/06 max.	TSS	70 mg/L	003	197 mg/L
09/13/06 max.	Fe	6.0 mg/L	003	12.6 mg/L
05/2006 avg.	Fe	3.0 mg/L	003	7.64 mg/L
05/24/06 max.	pH	9.0 s.u.	004	9.34 s.u.
05/12/06 max.	TSS	70 mg/L	003	92 mg/L
05/12/06 max.	Fe	6.0 mg/L	003	21.8 mg/L
04/2006 avg.	Fe	3.0 mg/L	003	7.68 mg/L
04/2006 avg.	Fe	3.0 mg/L	004	7.97 mg/L
04/12/06 max.	Fe	6.0 mg/L	003	10.94 mg/L
04/12/06 max.	Fe	6.0 mg/L	004	14.79 mg/L
03/2006 avg.	Fe	3.0 mg/L	004	21.47 mg/L
03/2006 avg.	TSS	35 mg/L	004	247 mg/L
03/22/06 max.	Fe	6.0 mg/L	004	32.4 mg/L
03/22/06 max.	TSS	70 mg/L	004	477 mg/L
03/08/06 max.	Fe	6.0 mg/L	004	10.53 mg/L

02/2006 avg.	Fe	3.0 mg/L	004	4.57 mg/L
02/08/06 min.	pH	6.0 s.u.	004	4.69 s.u.
02/22/06 max.	Fe	6.0 mg/L	004	8.45 mg/L
01/2006 avg.	Fe	3.0 mg/L	004	22.25 mg/L
01/2006 avg.	TSS	35 mg/L	004	245 mg/L
01/25/06 max.	Fe	6.0 mg/L	004	28.65 mg/L
01/25/06 max.	TSS	70 mg/L	004	450 mg/L
01/09/06 max.	Fe	6.0 mg/L	004	15.85 mg/L
12/2005 avg.	Fe	3.0 mg/L	004	22.6 mg/L
12/2005 avg.	TSS	35 mg/L	004	142 mg/L
12/27/05 max.	TSS	70 mg/L	004	266 mg/L
12/27/05 max.	Fe	6.0 mg/L	004	26.3 mg/L
12/14/05 max.	Fe	6.0 mg/L	004	19.02 mg/L

9. The Operator was issued NOVs on April 21, 2006; June 30, 2006; and September 5, 2006, for effluent violations at the Facilities. The June 30, 2006, and September 5, 2006, NOVs required a response within fourteen days of receipt by the Operator. The response was to be signed by the owner, a partner, or a responsible corporate official at the level of vice-president or above and was to include a report showing the steps that have been taken and are being taken to correct all violations.

10. On July 24, 2006, the Operator responded to the June 30, 2006, NOV issued to the Blue Creek Mine, advising that the effluent violations were due to mining in close proximity to the outfall. The outfall was subsequently treated with lime and aluminum sulfate.

11. On October 1, 2006, the Operator responded to the September 5, 2006, NOV issued to the Blue Creek Mine, advising that the effluent violations of Fe and TSS were due to mining and pumpage within the watershed of the outfall. The Operator also indicated the pH violation was due to treating the outfall with hydrated lime and aluminum sulfate in response to elevated TSS and Fe concentrations.

12. The Department documented deficiencies on-site at the Blue Creek Mine during an inspection on November 8, 2005. There were no effluent violations of permit limits during the inspection; however, the following deficiencies were noted:

- A. The SPCC plan for onsite fuel/chemical tanks/containers had not been fully implemented and/or maintained according to the PE-certified SPCC plan submitted to the Department and/or permit requirements.
- B. Soil/material contaminated by diesel fuel spill(s) had not been properly remediated resulting in the potential for uncontrolled discharges of hydrocarbons and other pollutants to groundwater and surface water(s) of the State of Alabama (Trinity Creek).

13. The Department issued a WL dated December 19, 2005, for the above referenced deficiencies, with a request for a response from the Operator to include a full report signed by the owner/operator, showing the steps that had been taken and were being taken to correct the noted deficiencies. This report was to be prepared by a PE and was to be submitted to the Department within seven (7) days of receipt of the WL by the Operator. As of November 3, 2006, the Department has not received a response from the Operator.

14. The Department documented deficiencies on-site at the McCollum Mine during an inspection on March 22, 2006. There were no effluent violations of permit limits during the inspection; however, the following deficiencies were noted:

- A. Adequate BMPs had not been implemented for the control of nonpoint source pollution from access roads.

- B. All significant drainage was not routed through an approved, permitted outfall as required by the permit.
- C. The SPCC plan for onsite fuel/chemical tanks/containers had not been fully implemented and/or maintained according to the PE-certified SPCC plan submitted to the Department and/or permit requirements.
- D. Soil/material contaminated by diesel fuel spill(s) had not been properly remediated resulting in the potential for uncontrolled discharges of hydrocarbons and other pollutants to groundwater and surface water(s) of the State of Alabama (unnamed tributary to Lost Creek).
- E. Outfall 002E had not been adequately maintained causing an embankment failure resulting in uncontrolled discharges of pollutants into water(s) of the State of Alabama (Burton Creek).
- F. There appeared to be a seep at the toe of the dam associated with outfall 005E. A discharge sample for outfall 005E should have been taken at the point at which co-mingling of the seep discharge and the surface spillway discharge occurred; or the seep discharge should have been sampled separately from the surface spillway discharge; the embankment should have been evaluated for long-term stability, and the seep should have been corrected or controlled to prevent discharge to waters of the State.

15. The Department issued a NOV dated May 9, 2006, for the above referenced deficiencies, with a request for a response from the Operator to include a full report signed by the owner/operator, showing the steps that had been taken and were being taken to correct the noted deficiencies. This report was to be prepared by a PE and was to be submitted to the Department within seven (7) days of receipt of the NOV by the Operator. Because a response was not received by the Department within the above time-frame, a second NOV was sent July 19, 2006, notifying the Operator of both the site deficiencies and the lack of response to the first NOV. On October 3, 2006, the Department received a response from the Operator addressing the issues noted in the May 9, 2006, NOV.

16. The Operator consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

17. The Department has agreed to the terms of this Consent Order in an effort to resolve the violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violation(s). The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

18. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) upon the environment; such person's history of previous violation(s); and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than One-Hundred Dollars (\$100) or exceed Twenty-Five Thousand Dollars (\$25,000) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed Two-Hundred & Fifty-Thousand Dollars (\$250,000). 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(S):** The Operator did not ensure that effective BMPs were fully implemented and maintained, resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. While the noted violation(s) caused harm, the noted violation(s) did not appear to cause irreparable harm to the environment. There is no evidence that the noted violation(s) were a threat to the health or safety of the public.

B. **THE STANDARD OF CARE:** The BMPs that were implemented were not entirely effective, and the Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Operator continued to monitor the Operator's discharges and report the results. The Department has been unable to ascertain if there has been a

significant economic benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements and delayed response to the noted violation(s).

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(S) UPON THE ENVIRONMENT: The Operator did not take effective actions to ensure full compliance with Permit discharge limitations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of previous violation(s) as described in the Stipulations.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

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 the Department 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.

ORDER

Therefore, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Cum. Supp.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violation(s) alleged herein. Therefore, the

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

A. The Operator agrees to pay to the Department a civil penalty in the amount of Thirteen-Thousand Dollars (\$13,000) in settlement of the violation(s) alleged herein within forty-five (45) days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five (45) days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty. *Request payment plan 2,000⁰⁰ 1st payment with 11 payments remaining at 1000⁰⁰ each. (K.I.)*

B. The Operator agrees 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
PO Box 301463
Montgomery, Alabama 36130-1463

C. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES permit limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator, except as may be provided otherwise by an ADEM approved compliance schedule contained in this Consent Order or any other Order executed or issued by the Department.

D. The Operator agrees, immediately upon the effective date of this Consent Order and continuing thereafter, to fully implement and maintain temporary BMPs to

prevent/minimize to the maximum extent practicable noncompliant and/or unpermitted discharges of pollutants to waters of the State.

E. The Operator agrees, unless relieved of this requirement in writing by the Department, that:

1. all inspections/evaluations shall be performed by a PE or a qualified person under the direct supervision of a PE;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of, and shall be certified by, a PE;
3. all applications, plans, and information shall be certified by a PE;
4. all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a PE;
5. all applications, plans, reports, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her PE designation, how the inspection/work was conducted, and the results of the inspection/work.

The Operator agrees, within seven (7) days of the receipt of any written comments from the Department, to modify any application, plan, information, report, or other submittal, or submit additional information/clarification to the Department to address any comments made by the Department in writing.

F. The Operator agrees, within five (5) days after the effective date of this Consent Order, to have a comprehensive inspection performed of the Facilities, offsite conveyances, and affected State waters.

G. The Operator agrees, within ten (10) days after the effective date of this Consent Order, to submit to the Department a plan detailing effective BMPs to be implemented at the Facilities to ensure full compliance with the requirements of ADEM Admin. Code chap. 335-6-9.

H. The Operator agrees, within twenty (20) days after the effective date of this Consent Order, to implement effective BMPs, implement any plan(s) required in this Consent Order, and correct all deficiencies at the Facilities, offsite conveyances, and affected State waters.

I. The Operator agrees, within twenty-five (25) days after the effective date of this Consent Order, to submit to the Department a certification that effective BMPs have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin. Code chap. 335-6-9 has been achieved at the Facilities, offsite conveyances, and affected State waters.

J. 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.

K. The Parties agree 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 violation(s) which are cited in this Consent Order.

L. The Operator agrees that the Operator is not relieved from any liability if the Operator fails to comply with any provision of this Consent Order.

M. 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 the Circuit Court of Montgomery County. 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 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 (10) 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.

N. The Department and the Operator 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 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.

O. The Department and the Operator 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 the Operator does hereby waive any hearing on the terms and conditions of same.

P. The Department and the Operator agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

Q. The Department and the Operator agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed penalty Orders to the public, and that the public have at least thirty (30) days within which to comment on the Consent Order.

R. The Department and the Operator agree that, 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.

S. The Department and the Operator agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

T. The Department and the Operator agree that, except as otherwise set forth herein, this Consent 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 the Operator's obligations to comply in the future with any permit coverage.

Executed in duplicate with each part being an original.

QUALITY COAL CO., INC.

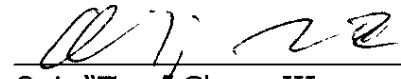

(Signature of Authorized Representative)

Kyle Ingle
(Print Name of Authorized Representative)

President
Title

Date Signed: 12-11-06

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Onis "Trey" Glenn, III
Director

Date Signed: 2/28/07