

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

BLOUNT SPRINGS SAND)

and GRAVEL, INC.)

DUFFY QUARRY)

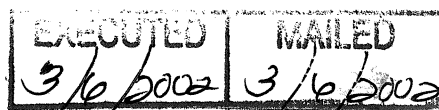
BLOUNT COUNTY, ALABAMA)

NPDES AL0064483)

CONSENT ORDER NO. 02-115-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (NPDES) administered by the Alabama Department of Environmental Management (hereinafter "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 concerned hereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:



1. Blount Springs Sand and Gravel, Inc. (hereinafter the "Permittee") operates Duffy Quarry, which is engaged in the mining of construction sand and gravel, wet preparation, and associated activities located off U.S. Highway 31 (Township 12 South, Range 2 West, Sections 31 and 32 and Township 13 South, Range 2 West, Section 6) in Blount County, Alabama.

2. The Alabama Department of Environmental Management 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 federal Water Pollution Control Act, 33 U.S.C. §§ 1251 through 1387, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended.

4. The Permittee has obtained a NPDES permit (hereinafter "the permit"), number AL0064483, and has six permitted outfalls;

001 – To Dry Creek, classified for Fish and Wildlife, and to Groundwater.

002 – To an unnamed tributary to the Mulberry Fork of the Black Warrior River, classified for Fish and Wildlife, and to Groundwater.

003 – To an unnamed tributary to the Mulberry Fork of the Black Warrior River, classified for Fish and Wildlife, and to Groundwater.

004 – To an unnamed tributary to the Mulberry Fork of the Black Warrior River, classified for Fish and Wildlife, and to Groundwater.

005 – To the Mulberry Fork of the Black Warrior River, classified for Fish and Wildlife, and to Groundwater.

006 – To the Mulberry Fork of the Black Warrior River, classified for Fish and Wildlife, and to Groundwater.

5. ADEM Admin. Code R. 335-6-6-.12(a)(1) requires that the Permittee must comply with all conditions of the NPDES permit.

6. Part II.,A.,1. of the NPDES permit states, "the Permittee shall at all times operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures."

7. An inspection by Departmental personnel of Blount Springs Sand and Gravel, Duffy Quarry, was conducted June 12, 2001. During the inspection, it was noted that the treatment structure and discharge structure for discharge point 004 was not properly maintained, resulting in an uncontrolled discharge of pollutants to an unnamed tributary of the Mulberry Fork of the Black Warrior River, a water of the State. The Permittee's failure to properly operate and maintain its pollution

control facilities caused excessive sediment deposition in the unnamed tributary of the Mulberry Fork of the Black Warrior River.

8. Part II,A.,2.,a., of the permit states, "unless otherwise authorized in writing by the Director or his designee, the Permittee shall provide a means of subsurface withdrawal for any point source identified on page 1 of this permit and described more fully in the Permittee's application."

9. The June 12, 2001 inspection revealed that the Permittee had failed to maintain a system of subsurface withdrawal from discharge point 004.

10. Part II,A.,3., of the permit states, "the Permittee shall promptly take all reasonable steps to minimize or prevent any violation of this permit or to mitigate and minimize any adverse impact to waters resulting from noncompliance with any discharge limitations specified in Part I,A., of this permit."

11. Part I,B.,6., of this permit requires the Permittee to inspect all permitted point sources at least twice per month.

12. The Permittee should have been aware, but apparently was unaware for an extended period of time, that the treatment structure for discharge point 004 had failed, and the Permittee did not take action to mitigate damages caused due to the failure of the treatment structure.

13. The Permittee neither admits nor denies the Findings presented in this Order. However, in the spirit of cooperation and with the desire to amicably resolve this matter with the Department, the Permittee has agreed not to contest this Order. In view of the aforementioned and its desire to comply with the

provisions of the Alabama Water Pollution Control Act and its implementation regulations, the Permittee agrees to all the terms of this Consent Order.

14. 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), 22-22-9(i) and 22-22-9(k) as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That, not later than 30 days after the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of \$5,000 for the violations cited herein.

B. That not later than 30 days after the effective date of this Consent Order, the Permittee shall prepare and submit for the Department's review a written report detailing the results of a comprehensive audit conducted by a Professional Engineer (PE) registered in Alabama, of the Duffy Quarry and all other active facilities and non-reclaimed facilities disturbed in the previous three (3) years. This report must be acceptable to the Department, and indicate the goals of the audit, who conducted the audit and their PE designation, how the audit was conducted, and shall contain the results of the audit and compliance schedule for correction of

any deficiencies to be completed not later than sixty (60) days after the effective date of this Consent Order.

C. That, not later than 60 days after the effective date of this Consent Order, the Permittee shall correct any deficiencies noted in the comprehensive audit.

D. That, not later than 65 days after the effective date of this Consent Order, the Permittee shall submit a certification by the PE who performed the audit that the deficiencies noted in the audit mentioned above have been corrected.

E. That stipulated penalties shall apply for one (1) year following the effective date of this Consent Order (not to exceed an aggregate cap of \$25,000) as described below:

- \$1,000 per daily effluent violation by this facility of any discharge limitation of the permit.
- \$500 for any required report under this Consent Order not submitted or submitted late.
- \$1,000 per week for any unmet compliance deadline under this Consent Order.
- \$5,000 for any discharge or action by this facility resulting in a violation of State water quality standards.
- \$10,000 for conducting any regulated activity by this facility without obtaining valid permit coverage.

F. Once stipulated penalties of \$25,000 are due to the Department and violations continue to occur, or, should violations occur after one (1) year after the

effective date of this Consent Order, the Department may, at its discretion, proceed either to a unilateral order revoking this Consent Order and imposing additional fines, or may proceed directly to litigation to seek additional fines and/or injunctive relief to enforce this Order in the Circuit Court of Montgomery County or other court of competent jurisdiction.

G. That notification to the Permittee by the Department of the assessment of the stipulated penalty is not required, and the stipulated penalty is due and payable to the Department within 30 days after the due date of the action and each 30 days thereafter, if necessary, regardless of whether demand for the stipulated penalty has been received by the Permittee.

H. That 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

I. That the Permittee shall comply with the Alabama Water Pollution Control Act (AWPCA), applicable Departmental regulations, and National Pollution Discharge Elimination System (NPDES) permit requirements for all current and future mining and regulated construction activities.

J. 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. 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.

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

M. That, for purposes of this Consent Order only, the Permittee 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 Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 Permittee, 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 Permittee) 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 Permittee, the Department may extend the time as justified by the specific circumstances. The Department may also grant any other additional time extension for good cause shown but is not obligated to do so.

N. 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 Permittee 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.

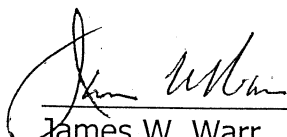
O. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Permittee does hereby waive any hearing on the terms and conditions of same.

BLOUNT SPRINGS SAND & GRAVEL, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Name of Authorized Representative)

President
Title


James W. Warr

Director

Date Signed: 2-28-02

Date Signed: 6 MAR 2002