

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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March 1, 2007

CERTIFIED MAIL

7000 1530 0000 6471 8974

GLEN PEACOCK
TIMBERLINE GRAVEL LLC
PO BOX 188
SARALAND AL 36571

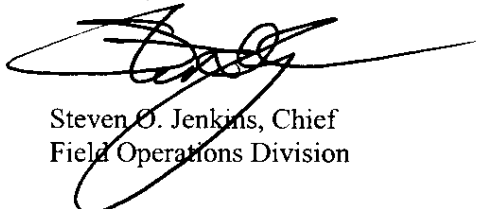
RE: CONSENT ORDER 07-083-CMNPS
Jackson Pit No.1
Clarke County (025)
NPDES AL0074705

Dear Mr. Peacock:

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 **Shelane P Bergquist, Mining Unit, Mining & Nonpoint Source Section**, by email at sbergquist@adem.state.al.us or by phone at (334) 394-4324.

Sincerely,



Steven O. Jenkins, Chief
Field Operations Division

soj/spb File:ECO/18542

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)
)
)

TIMBERLINE GRAVEL, LLC)
JACKSON PIT NO 1)
T6N, R2E, S31 & 32)
CLARKE COUNTY, ALABAMA)
NPDES AL0074705)
_____)

CONSENT ORDER 07-083-CMNPS

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "Department" or "ADEM"), and Timberline Gravel, LLC, (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.), the 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 Limited Liability Company which operates a construction sand and gravel mine with a preparation plant, Jackson Pit No. 1 (hereinafter "Facility") located in T6N, R2E, S31 & 32, near the city of Jackson, Clarke County, Alabama. Glen Peacock and Harvey Morris are the managing partners responsible for the Operator's compliance with State and federal environmental laws and regulations. Sediment and other pollutants in stormwater runoff from the Facility

have the potential to discharge and/or have discharged to an unnamed tributary to Salt Creek, and to the Tombigbee River, waters of the State, both classified for Fish & Wildlife, and to groundwater which is unclassified.

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

BMPs	Best Management Practices
DMR	Discharge Monitoring Report
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PAP	Pollution Abatement and/or Prevention
PE	Professional Engineer licensed to practice in the State of Alabama
SPCC	Spill Prevention Control and Countermeasures

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 September 11, 2002, the Operator was issued NPDES permit AL0074705 (hereinafter "Permit") by the Department for discharges of treated effluent from the Facility to waters of the State. The Permit is scheduled to expire on August 31, 2007.

5. Part II, B., 1., a., of the Permit requires the Operator to comply with all terms and conditions of the Permit.

6. Part II, A., 2., b., of the Permit requires the Operator to prepare, implement and maintain a SPCC Plan for all onsite petroleum product(s) or other pollutant storage tanks or containers as required by applicable state (ADEM Admin. Code r. 335-6-6-.12(r)) and federal regulations.

7. During an inspection of the Facility on March 8, 2006, the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to State waters. Also, the Department documented that the Operator had not prepared, implemented or maintained a SPCC Plan for the Facility with regard to the fuel storage tanks and containers present at the Facility.

8. Part II, A., 3, of the Permit requires the Operator to 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 limitation specified in Part I, A. of this Permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

9. On March 23, 2006, a NOV was sent to the Operator by the Department as a result of the March 8, 2006 inspection. The NOV notified the Operator of deficiencies documented at the Facility, and requested the Operator to submit to the Department a report prepared and certified by a PE to show the steps that either have been taken and are to be taken to correct all deficiencies to include: (1) an updated PAP Plan; (2) a SPCC Plan to include design, construction and maintenance for containment structures; (3) a plan for proper management or removal and disposal of any old equipment, containers, debris, etc.; (4) updated design, construction and maintenance plan for outfall 001P; (5) a plan to include an evaluation of the extent of contamination, and a compliance schedule for effective removal/remediation of contaminated soil/material; (6) detailed plan for permanent stabilization of the unprotected streambed; and (7) a

plan for stabilization and/or removal of sediment deposited offsite and into State waters. Said report was required to be submitted to the Department within seven (7) days of receipt of the NOV. On April 12, 2006, the Operator requested, and on April 14, 2006, the Department granted an extension of the compliance deadline contained in the March 23, 2006, NOV until April 25, 2006, to provide additional time for the Operator to submit to the Department a complete report.

10. The March 23, 2006, NOV requested the Operator to submit to the Department certification by a PE that all deficiencies at the Facility had been corrected within thirty (30) days of receipt of the NOV. On October 2, 2006, the Operator submitted certification by a PE that all deficiencies at the Facility had been corrected.

11. During an onsite meeting on May 2, 2006, the Operator advised that a dam breach was the cause of the discharges of sediment and other pollutants in stormwater runoff to State waters noted during the March 8, 2006, inspection. The Operator stated the dam breach occurred as a result of Hurricane Katrina.

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

13. 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

14. 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): Excessive sediment was allowed to be discharged from the Facility by the Operator. 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 Operator did not implement and fully maintain effective BMPs at the Facility. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: 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 took little or no action to minimize or mitigate the effects of the noted violation(s) upon the environment.

E. HISTORY OF PREVIOUS VIOLATION(S): The Operator does not have a history of previous violation(s).

F. THE ABILITY TO PAY: The Operator provided information indicating a reduced ability to pay a 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 (6) 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 Ten-Thousand Dollars (\$10,000) 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.

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 registration 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; and
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, 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 performed a comprehensive inspection of the Facility and submit the results to the Department to determine the compliance status of the Facility with ADEM NPDES rules.

G. The Operator agrees, within ten (10) days after the effective date of this Consent Order, to submit to the Department plans, including a schedule to accomplish corrective actions and/or improvements identified by the comprehensive inspection of the Facility, and to ensure full compliance with the requirements of ADEM Admin. Code ch. 335-6-6, and Admin. Code ch. 335-6-9.

H. The Operator agrees, within twenty (20) days after the effective date of this Consent Order, to submit to the Department a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facility deposited offsite and in State waters.

I. The Operator agrees, within twenty-five (25) days after the effective date of this Consent Order, to fully implement corrective actions and/or improvements identified by the comprehensive inspection of the Facility, that do not require modification of the Permit to ensure compliance with ADEM NPDES rules.

J. The Operator agrees, within thirty (30) days after the effective date of this Consent Order, to submit to the Department certification that all deficiencies identified by the comprehensive inspection have been corrected, and full compliance with the

requirements of the NPDES rules and Permits have been achieved, except for any corrective actions that must be authorized by modification of the Permits.

K. The Operator agrees that, if a modification to the Permit(s) is determined to be necessary to implement corrective actions to ensure compliance with the NPDES rules and Permits, the Operator shall submit a complete and correct application for major modification of the Permit, including the appropriate fee, no later than thirty-five (35) days after the effective date of this Consent Order.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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.

T. 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.

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

V. 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.

TIMBERLINE GRAVEL, LLC

Harvey R. Morris
(Signature of Authorized Representative)

HARVEY R. MORRIS
(Print Name of Authorized Representative)

Mgr MEMBER
Title

Date Signed: 12/21/06

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Onis "Trey" Glenn, III
Director

Date Signed: 2/28/07