

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

E.C.C.A. CALCIUM PRODUCTS, INC.
SYLACAUGA, ALABAMA

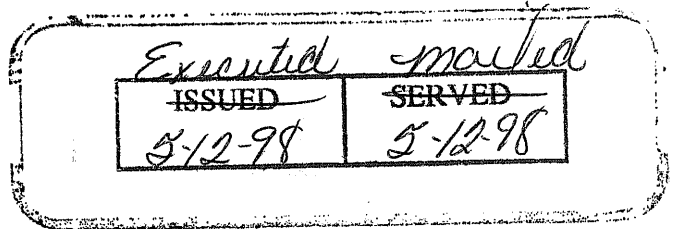
NPDES PERMIT NO. AL0003662

ORDER NO. 98-082-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, the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 through 22-22-14, as amended, and the National Pollutant Discharge Elimination System 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 adjudication of any issues of fact or law but with the consent of E.C.C.A. Calcium Products, Inc., the Department makes the following **FINDINGS**:

1. E.C.C.A. Calcium Products Inc., also known as E.C.C. American Calcium Products, Inc. (hereinafter, "E.C.C.A."), operates a marble quarry and a facility for the manufacture of calcium carbonate products, both of which are located in Sylacauga, Alabama.



2. On March 1, 1996, the Department reissued NPDES Permit No. AL0003662 to E.C.C.A. authorizing the discharge of pollutants to unnamed tributaries of Darby Branch, an unnamed tributary of Cedar Creek, and Gooch Branch, waters of the State, subject to certain terms, limitations and conditions.

3. On March 29, 1988, the Department issued Administrative Order No. 88-040-WP to E.C.C.A. for violations of its NPDES permit's discharge limitations.

4. On October 15, 1992, the Department issued Administrative Order No. 93-009-WP for violations of its NPDES permit's discharge limitations.

5. On October 15, 1993, EPA issued Administrative Order No. 93-121 to E.C.C.A. for failure to participate in EPA's QA/QC program.

6. On July 12, 1996, the Department and E.C.C.A. entered into Consent Order No. 96-116-CWP to E.C.C.A. for unpermitted discharges of pollutants into waters of the state, reporting violations, operation and maintenance violations, and violations of the toxicity requirements of its NPDES permit.

7. The Department contends that E.C.C.A. has violated the terms of Order No. 96-116-CWP as follows:

a. In compliance with Paragraph D of said Order, E.C.C.A. submitted a compliance schedule which required E.C.C.A. to submit, no later than August 15, 1996, an application for modification which would route all process wastewater to DSN 010. E.C.C.A. has failed to submit the application for modification.

b. The compliance schedule also required E.C.C.A. to submit an acceptable method for testing the permeability of DSN 010 no later than August 15, 1996. The plan was not submitted until March 28, 1997.

c. Process wastewater occasionally discharges through DSN 012, an impoundment designed to treat stormwater runoff only, in violation of Paragraph C of said order.

d. E.C.C.A. has failed to submit an updated Pollution Abatement/Prevention ("PAP") Plan and a detailed, comprehensive, updated Operations and Management Plan, although Paragraph E of said order required these plans to be submitted by September 10, 1996.

e. E.C.C.A. has failed to submit certification by the design engineer that plans required by Paragraph E. of the Order were implemented, although said certification was to be submitted no later than October 10, 1996.

f. E.C.C.A. has failed to submit updated design plans for DSN 010, although the compliance plan submitted in compliance with Paragraph D of said order required these plans to be submitted by August 15, 1996.

g. E.C.C.A. has failed to submit written procedures for managing washdown water, although the compliance plan submitted in compliance with Paragraph P of said Order required these procedures to be submitted by August 30, 1996.

h. E.C.C.A. has failed to submit a rationale for not constructing an emergency spillway for DSN 012, although this rationale was required by the compliance plan submitted in compliance with Paragraph D of said Order to be submitted by August 15, 1996.

i. E.C.C.A. has failed to submit a management plan including written procedures for sampling, analysis, self monitoring, record keeping, and an operating plan for managing process wastewater, although this plan was required by the

compliance plan submitted in compliance with Paragraph D of said Order to be submitted by September 15, 1996.

j. E.C.C.A. has failed to submit a narrative, with drawings, for controlling stormwater runoff from the portion of the facility known as Plant #2, although this was required by the compliance plan submitted in compliance with Paragraph D of said order to be submitted by August 15, 1996.

k. E.C.C.A. has failed to submit an engineering certification that stormwater runoff from the spoil area south of the South Quarry drains to the South Quarry, although this certification was required by the compliance plan submitted in compliance with Paragraph D to be submitted by August 15, 1996.

l. E.C.C.A. has failed to submit sediment drainage control plans, although these plans were required by the compliance plan submitted in compliance with Paragraph D of said Order to be submitted by August 30, 1996.

m. E.C.C.A. has failed to submit an operating plan for sediment handling including a record keeping system for volumes handled, location of storage and/or disposal areas, and self monitoring of drainage controls, although this plan was required by the compliance plan submitted by Paragraph D of said Order to be received by August 30, 1996.

n. E.C.C.A. has failed to pay the stipulated penalties which were due pursuant to Paragraph G of said Order as a result of other violations of Administrative Order No. 96-116-CWP.

o. E.C.C.A. has failed to comply with the terms, conditions and limitations of its NPDES permit as required by Paragraph I. of Order No. 96-116-CWP as follows:

(1) Part I,B.,1.,a.,(2) of AL0003662 requires the permittee to maintain 12" of freeboard at DSN 003 and 010. On January 7, 1997, and at other times prior to the date hereof, there was less than 12" of freeboard at DSN 003and 010. In addition, ECC had not implemented an adequate system for measuring freeboard in these ponds, and for several months after the effective date of the requirement that it measure freeboard it failed to do so.

(2) Part II.A.,2.,c. of AL0003662 requires E.C.C.A. to implement a Spill Prevention Control and Countermeasures ("SPCC") plan for all above ground storage of petroleum products and other chemicals and pollutants. During a January 7, 1997 inspection, ADEM personnel determined that E.C.C.A. had not implemented a SPCC plan for the Coagulant Aid 250 tank at DSN 010 and the plant #1 used oil storage area.

(3) Part II,A.,6. of AL0003662 requires E.C.C.A. to dispose of sludge removed in the course of wastewater treatment in a manner that complies with applicable rules and regulations. ADEM Admin. Code R. 335-6-9-.03(2)(d) requires E.C.C.A. to address, in its PAP plan, the method and plan for diverting surface water runoff from operational areas and mineral and refuse storage piles. E.C.C.A.'s PAP plan specifically addresses the method in which sludge and overburden material is to be disposed. E.C.C.A. operates two known overburden disposal areas and one sludge disposal area that are not addressed in E.C.C.A.'s PAP plan and do not meet the methodology outlined in the PAP plan.

(4) Part I.,B.,3. requires E.C.C.A. to take samples and measurements that are representative of the volume and nature of the discharge. E.C.C.A.'s daily log

of discharge for DSN 003 and 010 indicates discharges occurring on days in which E.C.C.A. reported no discharge on its Discharge Monitoring Reports.

8. Code of Alabama 1975, §22-22-9(i)(3) provides that "[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the [Department] in writing and must obtain such permit before discharging such pollution."

9. Part II, A.,2.,d. of E.C.C.A.'s permit requires E.C.C.A. to discharge all wastewater, including stormwater runoff, through a permitted point source described in E.C.C.A.'s application and permit.

10. E.C.C.A. operates, and has been operating for over two years, an overburden and sludge disposal area not identified in its application. Said area has no controls for treating stormwater runoff, discharges to groundwater, or routing the runoff to a permitted outfall.

11. E.C.C.A. requested that outfall 007 be deleted from its permit. This outfall discharges water from an abandoned quarry. The Department contends that the water which is discharged is contaminated by contact with material from the storage of heavy industrial equipment for salvage and unknown liquid waste stored at this site.

12. Under the terms of E.C.C.A.'s permit, only stormwater was to be discharged into the impoundment that ultimately discharges from outfall number DSN012. The Department contends that in December of 1996 and at other times prior to the date of this Order, E.C.C.A. discharged process-water into the impoundment that discharges through outfall number DSN012.

13. Part I,A.,1., of NPDES Permit No. AL0003662 limits the discharges through DSN 002, 005, 011 and 012 to non-process wastewater. During the January 7, 1997

inspection, the Department contends that process wastewater was discharging through outfall number DSN 012. The evidence indicates that process wastewater has discharged through this outfall on other occasions.

14. Part I, B., 1., a., (1) of NPDES Permit No. AL0003662 requires E.C.C.A. to sample or monitor each existing outfall at least every other week for each calendar month.

15. The Department contends, based upon information supplied by E.C.C.A. that E.C.C.A. sampled or monitored DSN 002, 003, 005, 010, 011 and 012 only once during November, 1996.

16. Part I, A., 2., of NPDES Permit No. AL0003662 requires E.C.C.A. to analyze effluent from DSN 003 and 010 for effluent toxicity, Total Suspended Solids, pH, Oil and Grease, and Flow.

17. The Department contends that on October 17, 1996 there was a discharge of effluent from DSN 003. The Department contends that E.C.C.A. failed to analyze the effluent for Oil and Grease.

18. Part IV, 5. of NPDES Permit No. AL0003662 provides that toxic discharges are an effluent violation.

19. The Department contends that on October 17, 1996, and at other times prior to the date hereof, E.C.C.A. discharged effluent from DSN 003 and failed to test for toxicity.

20. E.C.C.A. has a State Indirect Discharge Permit ("SID") which entitles it to discharge effluent to the City of Sylacauga wastewater treatment facilities, subject to certain monitoring and reporting conditions. The Department contends that E.C.C.A. has

not complied with those monitoring and reporting conditions during periods prior to the date of this Consent Order.

21. Although E.C.C.A. does not agree with the Department's contentions presented in this Consent Order, without admitting any fact, violation or liability, it does agree, in the spirit of cooperation and with the desire to amicably resolve this matter with the Department, not to contest those contentions or this Order. In view of the aforementioned and its desire to comply with the provisions of the Alabama Water Pollution Control Act and its implementing regulations, on the condition that its agreement not serve as an admission of any fact, violation or liability, E.C.C.A. also agrees to all the terms of this Consent Order.

22. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing **FINDINGS** and pursuant to Code of Alabama (1975), §§22-22A-5(10), and 22-22-9(c), 22-22-9(j), and 22-22-9(i), as amended, and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under the Federal Water Pollution Control Act §§402, 33 U.S.C. §1342, and with the consent of E.C.C.A., it is hereby ORDERED:

A. That not later than 45 days after the effective date of this Order, E.C.C.A. shall submit to the Department a plan for conducting a complete and comprehensive audit of

Alabama Water Pollution Control Act and Federal Water Pollution Control Act issues (hereinafter, "Water Act issues") by an independent and qualified Professional Engineer registered in Alabama. The plan shall address the entire Sylacauga facility and associated areas, including any attendant areas where industrial activities have occurred, as well as the quarry. Said plan shall address all reports, modifications, certifications and plans required by Consent Order No. 96-116-CWP and shall also address any potential or existing Water Act issues that have not been previously identified. In addition, the plan must include a schedule for completing the audit not later than 180 days after the effective date of this Order. The plan shall also include an evaluation of any other property owned or operated by E.C.C.A. in the state of Alabama. E.C.C.A. must incorporate any comments by the Department into this plan.

B. That not later than 180 days after the effective date of this Order, E.C.C.A. shall have conducted a complete comprehensive audit of Water Act issues by an independent and qualified Professional Engineer registered in Alabama as outlined in paragraph A above. The audit must:

1. Determine the external piping/routing of all process water and wastewater, and the external piping/routing of all chemicals and liquid fuels;
2. Determine the external and internal underground drainage systems;
3. Include a water/wastewater use/balance model for the facility. The model should accurately describe and explain in detail sources and reasons for water acquisition, water use, water loss (in the production, evaporation, etc.), and water/wastewater

discharges and take into account groundwater input and average rainfall, potable water, etc. The model shall be regularly revised as necessary to reflect current facility operations.

4. Determine all points of connection intended or not intended and identify each potential area for unpermitted commingling;

5. Determine conduits or points where leaks, spills, discharges of pollutants, etc. could exit the buildings;

6. Identify and describe all processes that use water and/or generate wastewater or have the potential to through spillage or other means of introducing wet and/or dry chemicals to stormwater runoff, process water or wastewater;

7. Determine points where chemicals (wet or dry) are added and identify all automated feed systems;

8. Identify all areas where vehicle washing (including rail cars) is conducted and determine potential for spillage and unpermitted commingling, and determine current procedures for gathering and disposal of wash water;

9. Identify all non-contact cooling water locations, potential points of discharge or commingling, and all additives;

10. Identify all potential areas of spillage or overflow of pollutants as defined by ADEM Admin. Code R. 335-6-6-.02(jj) (including, but not limited to, sump overflow, rail car loading, truck loading, etc.);

11. Determine all areas, internal and external, where sludge is generated, quantities of sludge generated, all areas where sludge is temporarily stored or permanently disposed, methods of disposal, and areas of potential spillage;

12. Determine all areas in which overburden is temporarily stored and permanently disposed;

13. Determine how and where solid waste is temporarily stored and permanently disposed for assessing stormwater control;

14. Identify all vehicle maintenance areas and describe solvents or other chemicals used and the disposal or recycling of oil and solvents;

15. Determine any other areas which have significant potential to discharge pollutants to waters of the State, as defined by Code of Alabama 1975, § 22-22-1(b)(2) including, but not limited to, dust suppression, wet scrubbers, laboratory management, chemical and product management from delivery to the plant to leaving the plant or on-site disposal of byproduct or waste materials;

16. Determine any other potential or existing Water Act issues, and any Water Act permit/regulation violations, or potential permit violations, including but not limited to record keeping and quality control/quality assurance procedures, and internal management procedures;

17. Survey the entire property for potential Water Act issues not now known.

18. Inspect and certify the 010 discharge conveyance structure, treatment structure, and its associated discharge structure for all direct or indirect discharges

pursuant to the plan prepared and submitted to the Department on March 28, 1997. Said certification shall be provided by a certified professional engineer registered in the state of Alabama.

19. Inspect, evaluate, or submit records that all other structures have been constructed to meet all other permit limitations and conditions.

C. That not later than 45 days after completion of the Water Act audit, E.C.C.A. shall submit to the Department a detailed compliance schedule, not to exceed 120 calendar days, for actions to correct any problems not previously noted that were found in the audit and to correct any other deficiencies identified by E.C.C.A. or the Department.

D. That not later than 315 calendar days after the effective date of this Order, E.C.C.A. shall have attained compliance with all provisions of this Order and shall submit to the Department a letter signed by a responsible corporate officer and the professional engineer certifying that all activities set forth in the compliance plan have been implemented as proposed in the plan and that the facility is in compliance with the provisions of this Order.

E. That 365 calendar days after the certification provided for in paragraph D of this Order, E.C.C.A. shall submit to the Department a follow-up certification signed by a responsible corporate officer and the professional engineer that the facility remains in compliance with the provisions of this Order.

F. That not later than seven calendar days after the date this Order becomes effective, E.C.C.A. shall pay to the Department the \$25,000 in stipulated penalties owed as a result of violations of Order No. 96-116-CWP.

G. That not later than thirty days after this Order becomes effective, E.C.C.A. shall pay to the Department a civil penalty of \$50,000 for the violations cited herein.

H. That unless there has been a written modification by the Department of any deadline required to be met by this Order, if E.C.C.A. violates any of the terms of this Order, E.C.C.A. shall become liable for stipulated penalties as follows:

1. For failure to submit any required reports, plans, certifications or applications in the time specified in the Order, E.C.C.A. shall pay a stipulated penalty to the Department in the amount of \$1,000 for each week that a report, plan, certification or application is overdue.

2. For the unpermitted discharge into waters of the State as defined by Code of Alabama 1975, § 22-22-1(b)(2) of any known toxic pollutants at any time during the 365 calendar days that follow the effective date of this Order, E.C.C.A. shall pay a stipulated penalty to the Department in the amount of \$1,000 for each discharge of a known toxic pollutant.

3. For the discharge into waters of the State of any pollutant at concentrations greater than the allowable daily maximum concentration during the 365 calendar day period following the effective date of this Order, E.C.C.A. shall pay a stipulated penalty to the Department in the amount of \$1,000 for each day or portion of a day for which there is a discharge of a pollutant exceeding the allowable daily maximum concentration of said pollutant.

4. For the discharge into waters of the State of effluent that has a pH greater or less than the allowable permit limits during the 365 calendar day period following the effective date of this Order, E.C.C.A. shall pay a stipulated penalty to the Department in the amount of \$1,000 for each day or portion of a day for which there is such a discharge.

5. For the violation of any state water quality standard during the 365 calendar day period following the effective date of this Order, E.C.C.A. shall pay a stipulated penalty to the Department in the amount of \$2,500 for each violation of a state water quality standard.

6. Stipulated penalties shall not be assessed for violations which are discovered and promptly reported to the Department in the course of the audit called for herein. However, this does not preclude the Department from taking enforcement action, including the assessment of civil penalties, based on any violations which are discovered during the course of the audit.

Penalties shall begin to accrue on the day after the complete performance is due or on the day a violation occurs, and shall continue to accrue through the day of performance is completed or for each day during which there is a violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order. Penalties shall continue to accrue regardless of whether the Department has notified E.C.C.A. of a violation. Stipulated penalties assessed pursuant to this Order shall not exceed a maximum aggregate of \$100,000. Any other provision or term of this Consent Order notwithstanding, the stipulated penalties and limitations thereto found in this Consent Order for violations

of this Consent Order are applicable only to such violations that occur prior to 670 days after the effective date of this Order, or until such time \$100,000 in stipulated penalties has been assessed. Violations of this Consent Order that occur or continue beyond 670 days after the effective date of this Order or after assessment of \$100,000 accumulated stipulated penalty are specifically subject to separate, additional enforcement by the Department, including the possible assessment of penalties for said violations.

All penalties owed to the Department under this condition shall be due and payable on the 15th day of each month after the month in which they occurred and shall be accompanied by an accounting of the violations giving rise to the stipulated penalties. All penalties shall be made payable to the Alabama Department of Environmental Management by check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All such checks shall reference E.C.C.A.'s name, address, NPDES permit number, and the Consent Order number of this action.

I. E.C.C.A. may be granted a modification of a deadline required to be met by this Order if the delay is caused by a *Force Majeure*. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of E.C.C.A., 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 E.C.C.A.) 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*. E.C.C.A. shall be granted a time extension commensurate with that caused by *Force Majeure* or physical impossibility. The Department may also grant any other additional time extension for good cause shown, including additional time for review by the Department as may be needed, but it is not obligated to do so.

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 the provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of all past violations of water issues which are known to the Department as of the date of execution of this Order and of all claims of the State of Alabama for past violations of E.C.C.A.'s NPDES permit for periods prior to December 31, 1996 that were investigated by the Attorney General of Alabama.

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

M. That for purposes of this Order only, E.C.C.A. agrees that the Department or the Attorney General may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. E.C.C.A. also agrees that in any action brought by the Department to compel compliance with the terms of this Consent Order, E.C.C.A. shall be limited to the defense of *Force Majeure*, compliance with this Consent Order, and physical impossibility.

N. That this Order does not preclude the Department or the Attorney General from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning E.C.C.A. which would constitute possible violations not addressed in this Consent Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and E.C.C.A. shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order.

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

ENTERED INTO this 12th day of May, 1998.

E.C.C.A. CALCIUM PRODUCTS,

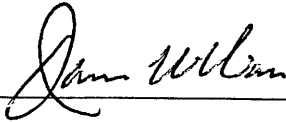
ALABAMA DEPARTMENT

INC.



By Its: operational manager

OF ENVIRONMENTAL
MANAGEMENT



By Its: Director