

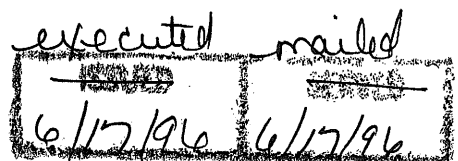
ALABAMA DEPARTMENT OF  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )  
 )  
ELMORE SAND & GRAVEL, INC. )  
ELMORE, ALABAMA )  
NPDES PERMIT NO. AL0066401 )  
 )

CONSENT ORDER NO. 96-102-CWP

FINDINGS

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



1. Elmore Sand & Gravel, Inc., (hereinafter "Elmore Sand & Gravel" or "the Permittee") operates a sand and gravel mine with a wet preparation plant and associated areas in Alabama, that discharges wastewater to waters of the State.

2. On July 1, 1993, the Department issued NPDES Permit No. AL0066401 (hereinafter, "the Scott Pit Permit") for wastewater discharges from the Scott Pit in Elmore County, Alabama.

3. The Scott Pit discharges effluent into Motar Creek, a water of the State, classified as suitable for Fish and Wildlife.

4. The Department contends the permittee violated the Scott Pit Permit by failing to route all surface drainage and stormwater runoff which originates within or enters this facility containing pollutants or other waste through a permitted point source, by failing to implement and maintain the Pollution Abatement/Prevention (hereinafter, "PAP") plan as described in the permittee's NPDES permit application, and by failing to implement and maintain a Spill Prevention Control and Countermeasures (hereinafter, "SPCC") plan.

5. The Department contends that discharges from the Scott Pit caused a contravention of state water quality standards for turbidity in Mortar Creek on March 22, 1996.

6. Elmore Sand & Gravel, in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and the NPDES Permits, and without any admission of liability, has agreed to the terms of the following Consent Order.

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

CONSENT ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(12), 22-22A-5(18), 22-22-9(I), and 22-22-9(k), the Department hereby Orders:

A. That the Permittee will pay to the Department Ten Thousand Dollars (\$10,000.00) due no later than July 20, 1996. The Department may file suit in the Circuit Court of Montgomery County, Alabama to collect the entire unpaid amount of the penalty if the payment becomes in default and is not made before 5:00 pm of the fifth day following a scheduled due date. The Department shall take no action to collect the penalty as long as the payment is made when scheduled.

B. That, at the Scott Pit, the Permittee will:

1. within fifteen (15) days after signing this Consent Order Elmore Sand & Gravel shall submit an updated PAP plan in accordance with all applicable ADEM Administrative Code Rules. Such plan shall be designed by a Professional Engineer licensed to practice in Alabama. The submitted PAP plan shall have

affixed thereto the seal and/or signature and license number of the professional engineer who designed such plan; and

2. within forty five (45) days after signing this Consent Order Elmore Sand & Gravel shall submit certification, on an approved form, with the design engineer's seal and/or signature and license number affixed to such certification, certifying that the entire PAP plan has been implemented; and

3. within seven (7) days after signing this Consent Order Elmore Sand & Gravel shall submit an SPCC plan, designed by a professional engineer licensed to practice in Alabama, in accordance with 40 CFR Part 112 and all applicable parts of NPDES permit AL0066401. This SPCC plan shall have affixed thereto the seal and/or signature and license number of the design engineer, certifying that the entire PAP plan has been implemented; and

4. within fourteen (14) days after signing this Consent Order Elmore Sand & Gravel shall submit certification to the Department, on an acceptable form, with the design engineer's seal and/or signature and license number affixed to such certification, certifying that the SPCC plan has been implemented; and

5. immediately and hereafter comply with all other terms, conditions and limitations of the Scott Pit Permit.

C. The permittee shall prosecute the work, outlined in their Professional Engineer's plans, continuously and diligently in the order and manner set out in the approved schedule.

If the permittee, or their Professional Engineer find it impossible for reasons beyond the control of the Permittee, such as unusually bad weather (as confirmed by the Weather Bureau), equipment breakdown (as justified by written documentation), or strikes by employees, or other reasons beyond the control of the Permittee, the Permittee's Professional Engineer, at the direction of the Permittee, may request that the approved schedule be extended.

Such request 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 seven (7) 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.

D. 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 the Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

E. 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 alleged in this Order.

F. That Elmore Sand & Gravel is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Order only, Elmore Sand & Gravel 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 the Circuit Court for Montgomery County, Alabama. Elmore Sand & Gravel also agrees in any action brought by the Department to compel compliance with the terms of the Agreement, Elmore Sand & Gravel shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility.

H. The sole purpose of this Consent Order is to resolve and dispose of all allegation 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 Order, then such future violations shall be addressed in Order as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Elmore Sand & Gravel not object to

such future orders, litigation, or enforcement action based upon the issuance of this Order if future Orders, litigation or other enforcement actions address new matters not raised in this Order.

I. By agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Elmore Sand & Gravel hereby waives any right to a conference prior to the issuance of the Order or any right to a hearing before the Environmental Management Commission.

ELMORE SAND & GRAVEL, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By: Bobby L. Harris

By: James Wilson

DATE: 6-13-96

DATE: 17 June 96