

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
MRC-FG, LLC)
Mine No 7 Preparation Plant)
Brookwood, Tuscaloosa County, Alabama)
)
NPDES Permit No. AL0084140)

Consent Order No. XX-XXX-CWP

PREAMBLE

This Special Order by Consent ("Consent Order") is made and entered into by the Alabama Department of Environmental Management ("the Department") and MRC-FG, LLC ("the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act ("AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a coal processing facility known as Mine No. 7 Preparation Plant ("the Plant") located on 18069 Hannah Creek Road, Brookwood, Tuscaloosa County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 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 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department issued National Pollutant Discharge Elimination System ("NPDES") Permit Number AL0084140 ("the Permit") to the Permittee on February 24, 2021, effective March 1, 2021, establishing limitations on the discharge of pollutants from such point

sources, designated herein as Outfall Numbers 001, 002, and 008, from the Plant to the unnamed tributaries to Davis Creek, all waters of the State of Alabama.

5. Outfalls 001, 002, and 008 ("the Outfalls") were previously covered by NPDES Permit Number AL0029181 which was issued to Warrior Met Coal Mining, LLC ("WMC") for its Mine No 7 facility. Although the Outfalls are now covered by the Permit held by the Permittee, WMC has continued to have operational control of discharges to the Outfalls at the Plant.

DEPARTMENT'S CONTENTIONS

6. Permit Condition II.D.4.a. states the Permit does not relieve the Permittee from compliance with applicable State water quality standards established in ADEM Admin. Code ch. 335-6-10, and does not preclude the Department from taking action as appropriate to address the potential for contravention of applicable State water quality standards which could result from discharges of pollutants from the permitted facility.

7. ADEM Admin. Code r. 335-6-10-.06(b) states that waters shall be free from floating materials attributable to industrial wastes or other wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use.

8. The State water quality standard found in ADEM Admin. Code r. 335-6-10-.09(5)(e)(9) states there shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve.

9. On April 27, 2021, and May 6, 2021, the Department conducted inspections at the Plant. During the inspections, the Department observed black material in the discharges from Outfall 008-1 resulting in a turbid appearance with substantial visible contrast to background conditions in an unnamed tributary to Texas Creek, and Davis Creek which are classified as suitable for Fish and Wildlife (ADEM Admin. Code r. 335-6-10-.09) in violation of ADEM Admin. Code r. 335-6-10-.06(b), ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), and Permit Condition II.D.4.a.

10. During the inspection on May 6, 2021, the Department also observed turbid discharges from Outfall 001, which was causing turbid appearance in substantial visible contrast with the background conditions in Davis Creek in violation of ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), and Permit Condition II.D.4.a.

11. Permit Condition I.A. states that during the period beginning on the effective date of the Permit and lasting through the expiration date of the Permit, the Permittee is authorized to discharge from each point source identified on Page 1 of the Permit and described more fully in the Permittee's application. Discharges shall be limited and monitored by the Permittee as specified in the Permit.

12. For the parameter Total Suspended Solids (hereinafter "TSS"), Permit Condition I.A. imposes discharge daily maximum limitations of 70.0 mg/L.

13. During the inspection on April 27, 2021, the Department collected a sample of the discharge from Outfall 008. Analysis indicated that the discharge had a TSS value of 131 mg/L which exceeded the daily maximum limitation of 70.0 mg/L in violation of Permit Condition I.A.

14. The DMRs submitted by the Permittee to the Department for monitoring periods May and June 2021 show two instances where the reported TSS concentrations exceeded the daily maximum limitation specified in Permit Condition I.A. The exceedances were reported as 107 mg/L and 94 mg/L, respectively. Each discharge of TSS above the maximum daily limitation of 70.0 mg/L is in violation of Permit Condition I.A.

15. On May 10, 2021, the Department received the Remediation Plan ("Plan") prepared in response to an Alabama Surface Mining Commission ("ASMC") Notice of Violation issued to WMC for Surface Mining Control and Reclamation Act violations which ultimately resulted in the turbid discharges. The Plan provides the results of an investigation to identify the cause of the violations, the results of stream monitoring, and the steps taken to remediate the effects of the discharges and prevent their recurrence. The Department has received weekly progress reports of the remediation actions along with sampling data and photographs.

16. On June 30, 2021, the Department issued an NOV ("the NOV") to the Permittee for the aforementioned violations of ADEM Admin. Code r. 335-6-9-.06(b), ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), Permit Condition I.A., and Permit Condition II.D.4.a. The NOV acknowledged the Plan previously submitted to the Department in response to the ASMC enforcement action and required additional information regarding all available information regarding capital investments, one-time non-depreciable expenditures, and avoided annual recurring costs resulting from delayed compliance.

17. The Department received a timely response to the NOV on July 27, 2021, submitted by representatives of the Permittee and WMC.

18. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department shall give consideration to the seriousness of the violation, 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 that delayed compliance may have conferred upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided, however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Violations of ADEM Admin. Code div. 335-6, the Permit, and the AWPCA were noted. In arriving at the civil penalty, the Department considered the general nature of each violation, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: The Permittee failed to exhibit a sufficient standard of care by failing to meet the requirements of ADEM Admin. Code r. 335-6-9-.06(b), ADEM Admin. Code r. 335-6-10-.09(5)(e)(9), Permit Condition I.A., and Permit Condition II.D.4.a.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is unaware of an economic benefit as a result of the Permittee's noncompliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is aware of efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of a history of previous violations of a similar nature.

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

G. 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 desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment A.

19. The Department neither admits nor denies the Permittee's contentions, which are set forth in Paragraphs 20 through 21 below. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

20. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order.

21. The Permittee's contentions are found in Attachment B.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. Not later than **forty-five (45) days** after issuance of this Order, the Permittee shall pay or cause to be paid to the Department a civil penalty in the amount of \$25,011 in settlement of the violations alleged herein. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Immediately upon issuance of this Consent Order, the Permittee shall continue to take immediate action to prevent, to the maximum extent possible, discharges resulting in an unsightly turbid appearance with significant visual contrast in a water of the State that would interfere directly or indirectly with any classified water use.

D. The Permittee shall ensure the continued submittal to the Department a copy of any reports required by the ASMC associated with the progress towards achieving compliance with Remediation Plan previously submitted.

E. The Permittee shall submit or cause to be submitted a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. This certification shall be submitted to the Department within thirty days of the submittal of the final report to the ASMC.

F. 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.

G. 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.

H. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. 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 have been beyond the reasonable control of the Permittee) 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 shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten 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 Permittee, 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 it is not obligated to do so.

J. 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 Mine which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if such future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

K. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

L. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. Final approval and issuance of this Consent Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public has at least thirty days within which to comment on the proposed Consent Order.

N. 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 hereof shall remain in full force and effect.

O. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

P. 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MRC-FG, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
EXECUTED AND ISSUED:

By: 

By: _____

Its: JIM REYER VICE PRESIDENT

Its: _____

Date: 10-21-21

Date: _____

**Attachment A
 Penalty Calculation**

**MRC-FG, LLC – Mine No. 7 Prep Plant
 Brookwood, Tuscaloosa County
 AL0084140**

Violation*	Number of Violations*	(A)	(B)	(C)	
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Causing State Waters to Contain Unsightly Materials in Violation of Water Quality Standards	2	\$8,000	\$4,000	\$0	
Causing State Waters to Contain Turbidity in Substantial Visible Contrast with the Natural Appearance in Violation of Water Quality Standards	2	\$8,000	\$4,000	\$0	
Failure to Limit Discharges as Specified by the Permit	3	\$786	\$225	\$0	
		\$16,786	\$8,225	\$0	
		Total (A)	Total (B)	Total (C)	
		Base Penalty Total [Total(A) + Total(B) + Total(C)]			\$25,011
		Mitigating Factors (-)			\$0
		Economic Benefit (+)			\$0
		Ability to Pay (-)			\$0
		Other Factors (+/-)			\$0
		INITIAL PENALTY			\$25,011
		Total Adjustments (+/-)			\$0
		FINAL PENALTY			\$25,011

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	\$0
Economic Benefit (+)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-)	\$0

Footnote

***See the "Department's Contentions" of the order for a detailed description of each violation and the penalty factors.**

Attachment B
Letter from Warrior Met Coal Mining, LLC

MRC-FG, LLC - Mine No 7 Prep Plant
Brookwood, Tuscaloosa County
AL0084140



Truman Tyler Hall, P. E.
Manager of Engineering
Warrior Met Coal Mining, LLC
Office (205) 554-6251
Cell (859) 227-1608
tyler.hall@warriormetcoal.com

October 21, 2021

Alabama Department of Environmental Management
1400 Coliseum Blvd.
Montgomery, AL 36110-2400
Attn: Jasmine White

Re: Proposed Consent Order
ADEM NPDES AL0084140
Mine No. 7 Preparation Plant
Tuscaloosa County (25)

Dear Mrs. White,

In response to the above referenced Proposed Consent Order, please be advised that although MRC-FG is the permittee for the NPDES permit, Warrior Met Coal Mining, LLC maintains and manages the outfalls associated with this permit in partnership with MRC-FG. Due to the events which led to these violations, Warrior Met Coal Mining, LLC will assume responsibility for any penalties associated with this Consent Order.

If you have any questions or concerns regarding this matter please feel free to contact me at 205-554-6251 or via e-mail at tyler.hall@warriormetcoal.com.

Warrior Met Coal Mining, LLC

A handwritten signature in blue ink that reads 'Truman Tyler Hall'.

Truman Tyler Hall, P.E.
Manager of Engineering

cc: Catherine Mcneill, ADEM
James Reyher, MRC-FG