

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

KIRKPATRICK CONCRETE

NPDES PERMIT # ALG11-0100

3626 BLACK ROAD

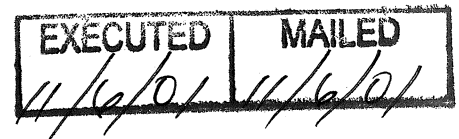
GADSDEN, ALABAMA

CONSENT ORDER NO. 02-017-CWP

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 regulations promulgated thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES"), administered by the Alabama Department of Environmental Management (hereinafter "the Department"), and approved by the Administrator of the United States Environmental Protection Agency, pursuant to the federal Water Pollution Control Act, codified at 33 U.S.C. § 1342, and without the adjudication of any issue 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. Kirkpatrick Concrete, Inc. (hereinafter "the Permittee") operates ready mix concrete plants in Pell City, Gadsden, and



Oneonta, Alabama. For the purpose of this Administrative Order, the term "Kirkpatrick Concrete, Inc." (hereinafter sometimes referred to as "Permittee") refers to Permittee's facility located at 3626 Black Road, Gadsden, Alabama. Said facility is located in Etowah County.

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. Permittee was issued General NPDES Permit number ALG11-0100. The initial issuance date was November 25, 1992. Initial coverage was effective on January 1, 1993. Upon the reissuance of said permit, the reissuance effective coverage date was September 1, 1997.

4. Among the terms, limitations, and conditions of NPDES Permit ALG11-0100 is a pH limitation of 6.0su-8.5su and a total suspended solid (TSS) value of 70mg/l for DSN001-1.

5. On July 28, 2000, employees of ADEM took a washdown/process wastewater (DSN001-1) sample. With regard to this sample, the pH was 11.51su and the total suspended solids (TSS) value was 175mg/l.

6. The Permittee violated Part I of its permit by the discharge, on July 28, 2000, of wastewater which exceeded the permit limitations of pH 6.0su-8.5su, and TSS value of 70mg/l. The receiving body for said discharge was an unnamed tributary to Big Wills Creek, a water of the state.

7. Among the terms, limitations, and conditions of NPDES Permit ALG11-0100, in particular Part 1, was a provision requiring the submission of Discharge Monitoring Reports ("DMRs") as defined in ADEM Admin. Code R. 335-6-6-.02(o) and contemplated by ADEM. Code R. 335-6-6-.12(1)5.

8. Permittee violated Part 1 of the permit by failing to submit DMRs for DSN001-1 and DSN002-1 for 1998.

9. Part 1 of the permit contains a requirement that the permittee properly monitor discharge.

10. The Permittee submitted monthly DRMs for DSN001-1 for 1997, 1999, and the first six months of 2000. The submitted DMRs were marked "no discharge".

11. Employees of ADEM conducted an inspection of the permittee's Gadsden facility on June 8, 2000. During the inspection cementitious material was observed in a ditch indicating that the process water had been discharging for some time. Additionally, it was observed that the basin was discharging. The discharge observed during the June 8, 2000 inspection should have been reported on the permittee's July 2000 DSN001-1 DMR. Prior DMRs should have reflected the discharges evidenced by observation of cementitious material in the ditch. As noted in paragraph ten (10) above, however, previously filed DMRs reflected 'no discharge'.

12. The permittee violated Part 1 of General NPDES Permit ALG11-0100 by failing to properly monitor as reflected in paragraph ten (10) and eleven (11) above.

13. Kirkpatrick Concrete, Inc., neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, Kirkpatrick Concrete, Inc., has consented to the terms of this Consent Order.

O R D E R

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), as amended, and with the consent of Kirkpatrick Concrete, Inc. it is hereby ORDERED:

A. That not later than thirty (30) days after the effective date of this ORDER, the Permittee shall pay to the Department a civil penalty in the amount of Two Thousand Five Hundred Fifty Dollars (\$2,550.00).

B. That immediately upon the effective date of this ORDER, Kirkpatrick Concrete, Inc. shall cease and desist from any and all unpermitted discharges to waters of the state.

C. That within fourteen (14) days of the effective date of this ORDER, the Permittee shall comply with each and every term, condition, and limitation of General NPDES Permit number ALG11-0100. For the purposes of this ORDER, compliance shall include, but not be limited to, discharge monitoring, reporting requirements, records keeping and retention requirements, and Best Management Practice requirements.

D. That within sixty (60) days of the effective date of this Order the Permittee shall submit, for ADEM's review, a written report prepared by a professional engineer, licensed in the state of Alabama, and possessing the qualifications set forth in by ADEM Admin. Code R. 335-6-3-.02(a). Said report must address the capture, treatment, and the recycling or discharge of all process waters.

E. That within thirty (30) days of receiving ADEM's comments, if any, with regard to the above-mentioned report, the Permittee shall review and address said comments.

F. That within thirty (30) days of responding to ADEM's comments, Permittee shall submit certification, from a professional engineer, as to the implementation of actions, remedies, or recommendations set forth in the above mentioned report. The certification shall also contain a projected completion date as to any actions, remedies, or recommendations set forth in the report.

G. 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.

H. 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.

I. That Kirkpatrick Concrete, Inc., is not relieved from any liability if it fails to comply with any provision of this Consent Order.

J. That for purposes of this Consent Order only, Kirkpatrick Concrete Inc., 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, or any other court of competent jurisdiction. Kirkpatrick Concrete, Inc., also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Kirkpatrick Concrete, Inc., 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 Kirkpatrick Concrete, Inc., 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 Kirkpatrick Concrete, Inc.) 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

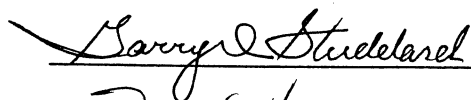
local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten (10) days prior to the 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 Kirkpatrick Concrete, Inc., 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.

K. That the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions state 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 Kirkpatrick Concrete, Inc., shall not object to such future orders, litigation, or enforcement actions 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.

L. 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 the Respondent does hereby waive any hearing on the terms and conditions of the same.

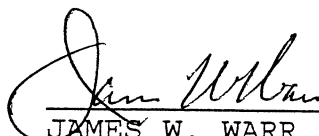
ORDERED and ISSUED this, the 6th day of November, 2001.

Kirkpatrick Concrete, Inc.


President
Title

Date signed: 11-02-01

Alabama Department of
Environmental Management


JAMES W. WARR
Director

Date signed: 6 Nov 2001