

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

KIRKPATRICK CONCRETE INC.)
2026 6TH AVENUE NORTH)
BESSEMER, ALABAMA)

CONSENT ORDER NO. 05-020-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, the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, 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 the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Department makes the following FINDINGS:

1. Kirkpatrick Concrete, Inc. ("the Permittee") is an Alabama corporation operating a concrete ready mix plant ("the facility") in Bessemer, Alabama.
2. The Alabama Department of Environmental Management ("the Department") is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.
3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, the Department is the state water pollution control agency for the purposes of the federal Clean Water Act, 33 U.S.C.

§§ 1251 through 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, §§ 22-22-1 through 22-22-14, Code of Alabama 1975, as amended.

4. 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 for a permit and must obtain such permit before discharging such pollution.” The Permittee obtained coverage under General Permit Number ALG 11-0067, authorizing the discharges of stormwater and process water into an unnamed tributary of Valley Creek, a water of the state, subject to certain terms, limitations, and conditions.

5. An inspection of the Permittee’s facility conducted by Department staff on November 13, 2003 revealed that the Permittee had violated the discharge limitations of its permit by discharging cementitious material from outfall DSN001-1 with a pH of 11.07 SU, in excess of the maximum pH of 8.5 SU allowed by its permit. In addition, the discharge of cementitious material is not authorized by the Permittee’s NPDES General Permit, thereby violating Code of Alabama 1975, § 22-22-9(i)(3), as amended. The November 13, 2003, inspection also revealed that the facility had failed to properly implement the best management practices (BMPs) required by its permit by failing to maintain its sediment basins and by failing to properly conduct BMP inspections.

6. Kirkpatrick violated the discharge limitations of its permit for pH (10.6 SU) and total suspended solids (TSS) (771 mg/l) for the month of January 2001, in violation of the daily maximum pH of 8.5 SU and TSS limit of 70 mg/l, respectively.

7. Part I of the Permittee’s NPDES permit requires the Permittee to monitor its discharge and report the results of its monitoring on Discharge Monitoring Reports (“DMRs”) which must be submitted to the Department according to the schedule contained in the permit. The Permittee violated this requirement of its NPDES permit by submitting signed, blank DMRs for DSN001-1 for the months of February 2003 and May 2003.

8. The Permittee neither admits nor denies the Department's contentions. Nevertheless, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Water Pollution Control Act, the Permittee has agreed to the terms of this Consent Order.

9. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and 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), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), 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 pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, and with the consent of the Permittee, it is hereby Ordered:

A. That, within 45 days from the effective date of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of six thousand two hundred dollars (\$6,200.00) for the violations cited herein.

B. That the Permittee will comply with the discharge limitations and monitoring requirements of the applicable permit immediately upon the effective date of this Consent Order and will maintain compliance each and every day thereafter.

C. That, beginning on the effective date of this Consent Order and continuing 180 days thereafter, the Permittee will pay to the Department stipulated penalties in the amount of Two Hundred Dollars (\$200.00) for each and every violation of any daily maximum or minimum limitation of the Permit and Four Hundred Dollars (\$400.00) for the violation of each and every monthly average limitation of the Permit. If, after 180 days from the effective date of this Consent Order, the Permittee continues to violate the permit, the Department reserves the right to proceed unilaterally to address those violations through subsequent orders, litigation and/or

suspension or revocation of the Permit. All penalties owed to the Department under this condition shall be submitted with the DMR upon which the violation is reported. All penalties 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, AL 36130-1463

All such checks shall reference the Permittee's name, address, and the docket number of this Consent Order and shall be accompanied by a letter describing the dates and values of the violations for which the stipulated penalties are paid.

D. That, immediately and hereafter, the Permittee shall comply with all terms, conditions and limitations of its NPDES Permit, including the discharge limitations, monitoring requirements, and best management practices requirements contained therein, until either the expiration of that Permit or the expiration of Kirkpatrick's coverage by that Permit, whichever comes first.

E. That, immediately and hereafter, Kirkpatrick Concrete Inc will cease from the unpermitted discharge of cementitious materials to waters of the State.

F. That, within 30 days from the effective date of this Consent Order, Kirkpatrick Concrete, Inc. will submit for the Department's review and comment a report, prepared by a professional engineer licensed in the State of Alabama, addressing the facility's environmental housekeeping and the steps that have been taken and/or being taken to correct these violations.

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. 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.

K. 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 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 action based on the issuance of this 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 Permittee does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

KIRKPATRICK CONCRETE, INC.

By:

Barry Steelbaird
PRESIDENT

DATE:

October 07, 2004

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

James W. Warr

James W. Warr, Director (ALDING)
Alabama Department of
Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700

DATE:

8 Dec 2004