

LANCE R. LEFLEUR  
DIRECTOR



ROBERT J. BENTLEY  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov  
1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

JUL 10 2013

**CERTIFIED MAIL**  
**91 7108 2133 3935 0331 4891**  
**RETURN RECEIPT REQUESTED**

Mr. George Lewis  
Lewis Materials, L.L.C.  
Post Office Box 254  
Headland, Alabama 36345

**RE: Final Consent Order No. 13-109-CWP**  
Long Road Pit  
NPDES Permit No. AL0077089  
Houston County (069)

Dear Mr. Lewis:

Please find enclosed ADEM Consent Order No. 13-109-CWP which requires you to take certain actions at the sand & gravel operation listed above in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Lewis Materials, L.L.C., and the Department.

Please note that the civil penalty in the amount of \$6,500.00 is due not later than forty-five days after the effective date of this order.

If you have questions regarding this matter, please contact Chase Williams by email at [ctwilliams@adem.state.al.us](mailto:ctwilliams@adem.state.al.us) or by phone at (334) 271-7762.

Sincerely,

A handwritten signature in black ink that reads "Glenda L. Dean". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Glenda L. Dean, Chief  
Water Division

GLD/ctw

File: ECO/25396

Enclosure

Cc: Thomas L. Johnston, Office of General Counsel  
James Wright, Office of General Counsel  
Jeffery W. Kitchens, Water Division  
Catherine A. McNeill, Water Division  
Chase Williams, Water Division

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S. W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Lewis Materials, L.L.C.

Long Road Pit  
NPDES Permit No. AL0077089  
Houston County, Alabama

CONSENT ORDER NO. 13-109-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Lewis Materials, L.L.C., (hereinafter, "the Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter, "AWPCA"), Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Operator operates a construction sand and gravel mining operation at the Long Road Pit (hereinafter, "the Mine"). The Mine is located off of Dunn Road in Dothan, Houston County, Alabama. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 1387. In addition,

the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued National Pollutant Discharge Elimination System (hereinafter, "NPDES") Permit Number AL0077089 (hereinafter, "the Permit") to the Operator on April 29, 2005, with an effective date of May 1, 2005, establishing limitations on the discharge of pollutants from a point source, designated therein as Outfall Number 001, from the Mine to Omussee Creek and to groundwater, both waters of the State.

#### ***DEPARTMENT'S CONTENTIONS***

5. ADEM Admin. Code r. 335-6-6-.06 provides that "[t]he terms and conditions of an expiring NPDES permit are automatically extended until the effective date of a new NPDES permit if the permittee has submitted a timely and complete application for reissuance of an NPDES permit and the delay in permit issuance has not been caused by the actions of the permittee in accordance with 335-6-6-.08(1)(k)8...."

6. ADEM Admin. Code r. 335-6-6-.08(1)(k)8. provides that "[a]pplications for... permit reissuance and for permit modifications...shall be submitted ...for permit reissuance at least 180 days prior to expiration of the current permit."

7. Pursuant to ADEM Admin. Code rs. 335-6-6-.06 and 335-6-6-.08(1)(k)8., a complete application for reissuance of the Permit was due to be submitted to the Department at least 180 days prior its expiration date of April 30, 2010, in order for the terms and conditions of the Permit to be automatically extended beyond the expiration date. The Department has not received the application for permit reissuance, which was due to the Department by November 1, 2009.

8. The Permit expired on April 30, 2010.

9. ADEM Admin. Code r. 335-6-9-.05(1) states that "[a]ll surface mining operations must have an NPDES permit issued by the Department pursuant to this chapter." An inspection conducted by the Department on January 11, 2013 showed that the Operator has continued surface mining operations at the Mine without coverage under an NPDES permit, in violation of ADEM Admin. Code r. 335-6-9-.05(1), since May 1, 2010.

10. Ala. Code § 22-22-9(e) requires that a person respond to a Notice of Violation (hereinafter, "NOV") within such time as specified by the Department. On June 12, 2012, the Department issued an NOV to Lewis Materials, L.L.C., requiring the Operator to submit a complete application for reissuance of the Permit within thirty days receipt of the NOV. The Department has not received the requested information. The Operator violated Ala. Code § 22-22-9(e) by failing to respond to the NOV.

11. Pursuant to Ala. Code § 22-22A-5(18)c, as amended, in determining the amount of any penalty, the Department must 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:** In arriving at the civil penalty, the Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public.

B. **THE STANDARD OF CARE:** In considering the standard of care manifested by the Operator, the Department noted that the violation of the failure to timely apply was nontechnical and easily avoidable.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Operator delayed certain costs associated with the timely submittal of an application for reissuance of the Permit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any violations prior to those noted herein.

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

G. OTHER FACTORS: 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 1.

I. The Department neither admits nor denies the Operator's contentions, which are set forth 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.

#### **OPERATOR'S CONTENTIONS**

12. The Operator neither admits nor denies the Department's contentions. The Operator consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

#### **ORDER**

THEREFORE, the Operator, 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 six penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, including previous penalty amounts assessed for similar violations, 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 the violations alleged herein. Therefore, the

Department and the Operator (hereinafter, "the Parties") agree to enter into this ORDER with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$6,500 for the violations stated herein, not later than forty-five days after the effective date of this Order.

B. The Operator agrees that all penalties due pursuant to this 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. The Operator agrees that, no later than thirty days after the effective date of this Order, the Operator shall prepare and submit to the Department a complete application for reissuance of expired NPDES Permit Number AL0077089. Modifications to the renewal package, if required, shall be submitted to the Department so that they are received no later than thirty days after the Operator's receipt of the Department's comments.

D. The Operator agrees to comply with all terms and conditions of expired NPDES Permit Number AL0077089 immediately upon the effective date of this Order until such time that a new permit can be issued for the Mine.

E. The Parties agree that this Consent Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

F. The Parties agree 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.

G. The Parties agree 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.

H. The Operator agrees that it 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 Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator 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 that are beyond the reasonable control of the Operator, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that 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 Operator) 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 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 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 Operator, 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 Parties agree 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 Mine that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by 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, and the Operator shall not object to such future orders, litigation or enforcement action based on the execution of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

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

L. The Parties agree that final approval and execution of this Consent Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

M. The Parties agree that, 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.

N. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.


O. The Parties agree that, 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 Operator of its obligations to comply in the future with any permit.



Executed in duplicate, with each part being an original.

**Lewis Materials, L.L.C.**

**Alabama Department of  
Environmental Management**

By: 

Its: President

Date: 5-20-2013

By: 

Its: Deputy Director

Date: 7-10-2013

**Attachment 1  
Penalty Synopsis**

**Lewis Materials, LLC - Long Road Pit**

<b>Violation</b>	<b>Number of Violations</b>	<b>Seriousness of Violation &amp; Base Penalty</b>	<b>Standard of Care</b>	<b>History of Previous Violations</b>
Failure to respond to a NOV	1	\$3,000	\$1,500	
Operating a surface mining operation without a valid NPDES Permit	1	\$3,000	\$1,500	
<b>Totals:</b>	<b>2</b>	<b>\$6,000</b>	<b>\$3,000</b>	<b>\$0</b>
<b>Economic Benefit:</b>				<b>\$800</b>
<b>Mitigating Factors:</b>				<b>\$0</b>
<b>Ability to Pay:</b>				<b>\$0</b>
<b>Other Factors:</b>				<b>(\$3,300)</b>
<b>Final Penalty:</b>				<b>\$6,500</b>

\*Refer to the "Findings" of the Order for a description of each penalty factor.

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

Lewis Materials, L.L.C.

Long Road Pit  
NPDES Permit No. AL0077089  
Houston County, Alabama

CONSENT ORDER NO. 13-109-CWP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Lewis Materials, L.L.C., (hereinafter, "the Operator") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter, "AWPCA"), Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

***STIPULATIONS***

1. The Operator operates a construction sand and gravel mining operation at the Long Road Pit (hereinafter, "the Mine"). The Mine is located off of Dunn Road in Dothan, Houston County, Alabama. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 1387. In addition,

the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued National Pollutant Discharge Elimination System (hereinafter, "NPDES") Permit Number AL0077089 (hereinafter, "the Permit") to the Operator on April 29, 2005, with an effective date of May 1, 2005, establishing limitations on the discharge of pollutants from a point source, designated therein as Outfall Number 001, from the Mine to Omussee Creek and to groundwater, both waters of the State.

#### ***DEPARTMENT'S CONTENTIONS***

5. ADEM Admin. Code r. 335-6-6-.06 provides that "[t]he terms and conditions of an expiring NPDES permit are automatically extended until the effective date of a new NPDES permit if the permittee has submitted a timely and complete application for reissuance of an NPDES permit and the delay in permit issuance has not been caused by the actions of the permittee in accordance with 335-6-6-.08(1)(k)8...."

6. ADEM Admin. Code r. 335-6-6-.08(1)(k)8. provides that "[a]pplications for... permit reissuance and for permit modifications...shall be submitted ...for permit reissuance at least 180 days prior to expiration of the current permit."

7. Pursuant to ADEM Admin. Code rs. 335-6-6-.06 and 335-6-6-.08(1)(k)8., a complete application for reissuance of the Permit was due to be submitted to the Department at least 180 days prior its expiration date of April 30, 2010, in order for the terms and conditions of the Permit to be automatically extended beyond the expiration date. The Department has not received the application for permit reissuance, which was due to the Department by November 1, 2009.

8. The Permit expired on April 30, 2010.

9. ADEM Admin. Code r. 335-6-9-.05(1) states that "[a]ll surface mining operations must have an NPDES permit issued by the Department pursuant to this chapter." An inspection conducted by the Department on January 11, 2013 showed that the Operator has continued surface mining operations at the Mine without coverage under an NPDES permit, in violation of ADEM Admin. Code r. 335-6-9-.05(1), since May 1, 2010.

10. Ala. Code § 22-22-9(e) requires that a person respond to a Notice of Violation (hereinafter, "NOV") within such time as specified by the Department. On June 12, 2012, the Department issued an NOV to Lewis Materials, L.L.C., requiring the Operator to submit a complete application for reissuance of the Permit within thirty days receipt of the NOV. The Department has not received the requested information. The Operator violated Ala. Code § 22-22-9(e) by failing to respond to the NOV.

11. Pursuant to Ala. Code § 22-22A-5(18)c, as amended, in determining the amount of any penalty, the Department must 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:** In arriving at the civil penalty, the Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to public.

B. **THE STANDARD OF CARE:** In considering the standard of care manifested by the Operator, the Department noted that the violation of the failure to timely apply was nontechnical and easily avoidable.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Operator delayed certain costs associated with the timely submittal of an application for reissuance of the Permit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any violations prior to those noted herein.

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

G. OTHER FACTORS: 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 1.

I. The Department neither admits nor denies the Operator's contentions, which are set forth 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.

#### **OPERATOR'S CONTENTIONS**

12. The Operator neither admits nor denies the Department's contentions. The Operator consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

#### **ORDER**

THEREFORE, the Operator, 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 six penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, including previous penalty amounts assessed for similar violations, 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 the violations alleged herein. Therefore, the

Department and the Operator (hereinafter, "the Parties") agree to enter into this ORDER with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$6,500 for the violations stated herein, not later than forty-five days after the effective date of this Order.

B. The Operator agrees that all penalties due pursuant to this 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. The Operator agrees that, no later than thirty days after the effective date of this Order, the Operator shall prepare and submit to the Department a complete application for reissuance of expired NPDES Permit Number AL0077089. Modifications to the renewal package, if required, shall be submitted to the Department so that they are received no later than thirty days after the Operator's receipt of the Department's comments.

D. The Operator agrees to comply with all terms and conditions of expired NPDES Permit Number AL0077089 immediately upon the effective date of this Order until such time that a new permit can be issued for the Mine.

E. The Parties agree that this Consent Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

F. The Parties agree 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.

G. The Parties agree 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.

H. The Operator agrees that it 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 Operator agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator 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 that are beyond the reasonable control of the Operator, including its contractors and consultants, that could not be overcome by due diligence (i.e., causes that 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 Operator) 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 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 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 Operator, 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 Parties agree 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 Mine that would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed by 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, and the Operator shall not object to such future orders, litigation or enforcement action based on the execution of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

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

L. The Parties agree that final approval and execution of this Consent Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

M. The Parties agree that, 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.

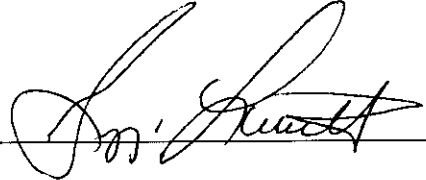
N. The Parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

O. The Parties agree that, 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 Operator of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

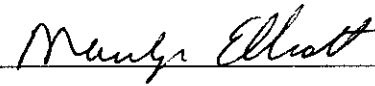
**Lewis Materials, L.L.C.**

**Alabama Department of  
Environmental Management**

By: 

Its: President

Date: 5-20-2013

By: 

Its: Deputy Director

Date: 7-10-2013

**Attachment 1**  
**Penalty Synopsis**  
**Lewis Materials, LLC - Long Road Pit**

<b>Violation</b>	<b>Number of Violations</b>	<b>Seriousness of Violation &amp; Base Penalty</b>	<b>Standard of Care</b>	<b>History of Previous Violations</b>
Failure to respond to a NOV	1	\$3,000	\$1,500	
Operating a surface mining operation without a valid NPDES Permit	1	\$3,000	\$1,500	
<b>Totals:</b>	<b>2</b>	<b>\$6,000</b>	<b>\$3,000</b>	<b>\$0</b>
<b>Economic Benefit:</b>				<b>\$800</b>
<b>Mitigating Factors:</b>				<b>\$0</b>
<b>Ability to Pay:</b>				<b>\$0</b>
<b>Other Factors:</b>				<b>(\$3,300)</b>
<b>Final Penalty:</b>				<b>\$6,500</b>

\*Refer to the "Findings" of the Order for a description of each penalty factor.