

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

LEVOYDE BRADFORD d/b/a

B & S GRAVEL COMPANY

BRADFORD PIT #3

DICKINSON, ALABAMA

NPDES PERMIT NUMBER AL0059471

LEVOYDE BRADFORD d/b/a

BRADFORD GRAVEL COMPANY

HARRELL PIT,

NPDES PERMIT NUMBER AL0067288

DICKINSON, ALABAMA

POWELL PIT,

NPDES PERMIT NUMBER AL0070319

DICKINSON, ALABAMA

SWAMP PIT #2

NPDES PERMIT NUMBER AL0060151

DICKINSON, ALABAMA

WEBB PIT,

NPDES PERMIT NUMBER AL0058262

DICKINSON, ALABAMA

CONSENT ORDER NO. 99-151-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to -16, Code of Alabama 1975, as amended, the Alabama Water Pollution Control Act, §§ 22-22-1 to -14, Code of Alabama 1975, as amended, 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 § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department makes the following FINDINGS:

executed mailed
9/3/99 9/3/99

1. Levoyde Bradford d/b/a B & S Gravel Company, Bradford Pit #3, (hereinafter, "Bradford" or the "Permittee") operates a sand and gravel mining operation (hereinafter, "Pit #3") located in Clarke County, Alabama. On July 1, 1995, Bradford was issued NPDES Permit Number AL0059471 for Bradford Pit #3 by the Department.

Levoyde Bradford d/b/a Bradford Gravel Company, Harrell Pit, (hereinafter, "Bradford" or the "Permittee") operates a sand and gravel mining operation (hereinafter, "Harrell Pit") located in Clarke County, Alabama. On October 1, 1995, Bradford was issued NPDES Permit Number AL0067288 for the Harrell Pit by the Department.

Levoyde Bradford d/b/a Bradford Gravel Company, Powell Pit, (hereinafter, "Bradford" or the "Permittee") operates a sand and gravel mining operation (hereinafter, "Powell Pit") located in Clarke County, Alabama. On December 1, 1996, Bradford was issued NPDES Permit Number AL0070319 for the Powell Pit by the Department.

Levoyde Bradford d/b/a Bradford Gravel Company, Swamp Pit #2, (hereinafter, "Bradford" or the "Permittee") operates a sand and gravel mining operation (hereinafter, "Swamp Pit #2" located in Clarke County, Alabama. On December 1, 1996, Bradford was issued NPDES Permit Number AL0060151 for the Swamp Pit #2 by the Department.

Levoyde Bradford d/b/a Bradford Gravel Company, Webb Pit, (hereinafter, "Bradford" or the "Permittee") operates a sand and gravel mining operation (hereinafter, "Webb Pit") located in Clarke County, Alabama. On September 1, 1994, Bradford was issued NPDES Permit Number AL0058262 for the Webb Pit by the Department.

2. Part II,A.,1. of NPDES Permit Number AL0059471, states as follows:

The permittee shall at all times operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator

staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of this permit.

Part II,A.,2.,d of NPDES Permit Number AL0059471, states as follows:

All surface drainage and stormwater runoff which originates within or enters the permittee's premises and which contains any pollutants or other wastes shall be discharged, if at all, from a point source identified on Page one (1) of this Permit and described more fully in the permittee's application.

During the April 30, 1997, inspection of Bradford Pit #3, it was observed that the dam of the treatment pond had been breached, rendering the treatment pond ineffective, in violation of Part II,A.,1., and Part II,A.,2.,d of NPDES Permit Number AL0059471.

3. Part II,A.,7. of NPDES Permit Number AL0059471, states as follows:

Upon the loss or failure of any treatment facility, including but not limited to the loss or failure of the primary source of power of the treatment facility, the permittee shall, where necessary to maintain compliance with the discharge limitations specified in Part I., A. of this permit, or any other terms or conditions of this permit, cease, reduce or otherwise control production and/or all discharges until treatment is restored.

The Permittee continued to conduct mining while making no apparent attempt to repair the breached treatment structure resulting in uncontrolled discharges of pollutants to waters of the State, in violation of Part II,A.,7. of NPDES Permit Number AL0059471.

Part II,3., of NPDES Permit Number AL0059471, states as follows:

The permittee shall promptly take all reasonable steps to minimize or prevent any violation of this permit or to mitigate and minimize any adverse impact to waters resulting from noncompliance with any discharge limitation specified in Part I.A. of this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

Despite the dam obviously being breached, the operator continued to operate without making any effort to repair the dam or prevent uncontrolled discharges of pollutants through the breach.

4. Part I,B.,8.,a. of NPDES Permit Number AL0059471, states as follows:

The Permittee is required to submit to the Department Discharge Monitoring Reports ("DMRs") quarterly.

A review of the Department files revealed the following late or nonsubmission violations:

Notice of Violation dated January 28, 1992 for failure to submit DMRs for the 3rd quarter of 1991.

Notice of Violation dated June 26, 1992 for failure to submit DMRs for the 1st quarter of 1992.

Notice of Violation dated September 14, 1992 for failure to submit DMRs for the 2nd quarter of 1992.

Failure to Submit dated October 14, 1994 for failure to submit DMRs for the 1st quarter of 1994.

Failure to Submit dated November 4, 1994 for failure to submit DMRs for the 2nd quarter of 1994.

Warning Letter dated October 31, 1995 for late submittal of DMRs for the 2nd quarter of 1995.

Notice of Violation dated June 20, 1997 for failure to submit DMRs for the 4th quarter of 1996.

Notice of Violation dated August 29, 1997 for failure to submit DMRs for the 1st quarter of 1997.

5. Levoyde Bradford d/b/a Bradford Gravel Co. was issued ADEM Administrative Order 90-022-WP on November 13, 1989. Bradford Gravel Company was issued ADEM Administrative Order 91-037-WP on January 18, 1991. Levoyde Bradford and ADEM agreed and executed ADEM Consent Order 97-002-CWP on October 7, 1996.

6. Bradford agrees in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest this Consent Order. In view of the aforementioned and its desire to comply with the provision of the Act, Bradford also agrees to all the terms of this Consent Order.

7. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. 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 §§ 22-22A-5(10) and 22-22-9, Code of Alabama 1975, 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 under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That not later than thirty (30) days following the date of execution of this Consent Order, Bradford shall pay to the Department a civil penalty in the amount of Four Thousand Dollars (\$4,000.00).

B. That Bradford shall immediately upon the date of execution of this Consent Order and continuing thereafter, take the necessary steps to mitigate any permit or rule violation, and to minimize to the extent possible the discharge of pollutants from the above-referenced facilities.

C. That Bradford shall submit updated Pollution Abatement/Prevention (PAP) plans designed and certified by a Professional Engineer registered in the State of Alabama, and in accordance with ADEM Admin. Code R. 335-6-9, for each of the above-referenced facilities in the caption of this Consent Order. Said PAP plans are due to the Department within one hundred sixty (160) days from the date of execution of this Consent Order.

D. That Bradford shall immediately, upon the date of execution of this Consent Order and continuing thereafter except provided in this Order, will comply with all permit conditions of each of the NPDES permits referenced in the caption part of this Consent Order.

E. That Bradford shall submit complete and correct NPDES applications for each unpermitted mining operation operated by Bradford, if any exists, within seven (7) days from the date of execution of this Consent Order and that Bradford shall submit to the Department within one hundred eighty (180) days from the date of execution of this Consent Order, certification by a professional engineer registered in the State of Alabama that the PAP plans referenced in paragraph "C", above, have been fully implemented and are effective in eliminating unpermitted discharges from the site and ensuring compliance with NPDES rules and regulations.

F. That Bradford shall submit within sixty (60) days from the date of execution of this Consent Order, a remediation plan prepared by a Professional Engineer registered in Alabama for the off-site remediation of all downgradient areas affected by the unpermitted/uncontrolled discharges from each of the above-referenced facilities in the caption of this Consent Order. That Bradford shall submit within one hundred eighty (180) days from the date of execution of this Consent Order, certification by a professional engineer registered in the State of Alabama that the remediation plan referenced in this paragraph has been fully implemented and is effective in eliminating unpermitted discharges from the site and ensuring compliance with NPDES rules and regulations for the off-site remediation of all downgradient areas affected by the unpermitted/uncontrolled discharges from each of the above-referenced facilities in the caption of this Consent Order.

G. That Bradford shall immediately, upon the date of execution of this Consent Order and continuing thereafter until completed, conduct inspections of all Bradford facilities in the State of Alabama. These inspections and any corrective action associated with these inspections shall be

completed within one hundred eighty (180) days from the date of execution of this Consent Order. These inspections shall be conducted by a Professional Engineer registered in Alabama and shall note all deficiencies and corrective actions to be taken at each site. Further, the inspection results shall be provided to the Department in inspection reports which shall be certified by the Professional Engineer for accuracy and shall be submitted to the Department immediately following said inspection.

If Bradford or their Professional Engineer, find it impossible for reasons beyond the control of Bradford, such as catastrophic weather (as confirmed by the National Weather Service), equipment breakdown (as demonstrated by written documentation), or strikes by employees or other reasons such as might be construed as a force majeure or physical impossibility under paragraph "M" of this Consent Order, then Bradford or their Registered Professional Engineer may request any schedule of compliance be extended. This request must be submitted at least seven (7) days prior to the originally anticipated completion date.

The Department may upon review, grant such extensions as may be justified by the circumstances and will not unreasonably withhold approval.

If after ninety (90) days unless extended in writing by the Department, Bradford fails to meet any of the milestone deadlines set forth in this Consent Order, the Department may, at its discretion, proceed either to a unilateral Order revoking this Consent Order and/or imposing additional civil penalties, or may proceed to civil litigation to seek additional civil penalties and/or injunctive relief.

H. Nothing in the foregoing schedule shall relieve Bradford from the obligation to comply with the provisions of its permits, or the Act and the regulations. Nothing in this Consent Order shall operate to relieve Bradford of any liability for any violations occurring at the facility following issuance of this Consent Order, except that no further civil penalties for the violations identified in this Consent Order shall be assessed beyond those stipulated herein.

I. 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.

J. 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. However, the issuance of this Consent Order does not preclude others from seeking fines or relief or sanctions against Bradford for the violations identified herein.

K. That Bradford is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. That for purposes of this Consent Order only, Bradford acknowledges that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. Bradford also acknowledges that in any action brought by the Department to compel compliance with the terms of this Consent Order, Bradford shall be limited to the defenses of Force majeure.

M. 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 in the above "FINDINGS". These allegations relate solely to the requirements of ADEM Admin. Code Div. 335-6. This Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs, or, should additional facts and circumstances be discovered in the future concerning Bradford which would constitute possible violations not addressed in this Consent Order, or if the violations noted herein continue, then such

future violations shall be addressed in other Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Bradford shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

N. By agreement of the parties, this Consent Order shall be considered final and effective upon the signature of all parties. This Consent Order shall not be appealable, and Bradford does hereby waive any administrative hearing on terms and conditions of same.

ORDERED and ISSUED executed in duplicate, each part being an original this the 3rd day of September, 1999.

LEVOYDE BRADFORD d/b/a
BRADFORD GRAVEL COMPANY;
LEVOYDE BRADFORD d/b/a
B&S GRAVEL COMPANY

By: Levyde Bradford

DATE: 8-26-99

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: Jim Wilson

Director

DATE: 2 Sep 99