



STATE OF MISSISSIPPI
PHIL BRYANT
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
GARY C. RIKARD, EXECUTIVE DIRECTOR

September 25, 2014

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. Robert Armstrong
A and A Excavating Contractors Inc, Burks Mine
PO Box 5397
Brandon, MS 39047

**Re: A and A Excavating Contractors Inc, Burks Mine
Agreed Order No. 6452 14**

Dear Mr. Armstrong:

Enclosed you will find a copy of Agreed Order No. 6452 14, which has been executed by the Executive Director of the Mississippi Department of Environmental Quality, Trudy Fisher, on behalf of the Mississippi Commission on Environmental Quality.

The enclosed Order assesses a civil penalty. The penalty payment, when due, should be made by check payable to the Mississippi Department of Environmental Quality and returned in the enclosed, self-addressed envelope to the MDEQ Fees Division at P.O. Box 2339, Jackson, MS 39225.

If you have any questions regarding your obligations under the enclosed order, please contact Liene Britt at (601) 961-5185.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Sanders", with a long horizontal flourish extending to the right.

Chris Sanders, P.E.
Chief, Environmental Compliance and Enforcement Division

Enclosure
cc: Liene Britt

Agency Interest No. 19592
ENF20130002

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. 6452 14

ROBERT ARMSTRONG, INDIVIDUALLY AND
D/B/A A AND A EXCAVATING CONTRACTORS INC
PO BOX 5397
BRANDON, MISSISSIPPI 39047

RESPONDENT

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission), acting through the staff and Executive Director of the Mississippi Department of Environmental Quality (MDEQ), Complainant, and Robert Armstrong, Individually and d/b/a A and A Excavating contractors, Inc., Respondents, in the above captioned cause and agree as follows:

1.

Respondents operate an approximately nine (9) acre surface mine (Burk's Mine) located off Wirtz Road, Brandon, Rankin County, Mississippi (the "Site") under two permits from the Office of Geology (P01-035 and P04-001) and a Certificate of Coverage (MSR321419) under the Mining Storm Water, Dewatering, and No Discharge General Permit ("Permit").

2.

By letter dated June 6, 2013, Respondents were contacted by Complainant and notified of the following violations at the Site:

- ACT 6, Condition S-3 of the Permit regarding the failure to mark the permit boundaries of the Site;

- ACT 6, Condition S-2 (7) of the Permit for failure to implement additional and/or alternate sediment and erosion controls when existing controls are inadequate;
- ACT 8, Condition S-1 of the Permit for failure to submit the required Annual Site Inspection Report Form to MDEQ for the years 2007, 2008, 2009, 2010, 2011, and 2012;
- ACT 4, Condition S-3 of the Permit for failure to submit a “Major Modification” Form for the mining of approximately 11.47 acres outside of the original permitted acreage;
- ACT 5, Condition S-1 of the Permit for failure to modify the approved Storm Water Pollution Prevention Plan (SWPPP) to include the approximately 11.47 acres mined outside of the original permitted acreage; and
- Mining an additional 11.47 acres without a surface mining permit in a violation of 11 Miss. Admin. Code Pt. 8, Ch. 1.

3.

As confirmed during an inspection conducted by MDEQ on September 4, 2013,

Respondents took the following corrective actions:

1. Ceased all mining activities in areas where surface mining and/or storm water permit coverage has not been obtained; and
2. Installed additional storm water and erosion controls at the Site within the original permitted nine (9) acres and within the unpermitted 11.47 acres.

4.

In lieu of a formal enforcement hearing concerning the violations listed above,

Complainant and Respondents agree to settle this matter as follows:

1. Respondents shall install boundary markers for the permitted mining area of approximately nine (9) acres within thirty (30) days after this Agreed Order has been executed by the MDEQ Executive Director (the “Effective Date”);

2. Respondents shall begin reclamation of the unpermitted mining areas (totaling approximately 11.47 acres) within ninety (90) days of the Effective Date of this order if, by that time, all necessary permits are not obtained for the operation of this area of the surface mine. Should the necessary permits not be obtained by the Respondents, reclamation of the unpermitted mining areas shall be completed within one-hundred eight (180) days of the Effective Date and shall consist of final slopes with three (3) horizontal units to one (1) vertical units and the establishment of permanent vegetation.
3. Respondents shall inspect all sediment and erosion controls within the unpermitted mining area within 24-hours after each rain event, or as necessary. Such inspections shall be conducted until the unpermitted mining area is sufficiently reclaimed, vegetated and stable with no need for temporary sediment and erosion control measures or until the appropriate mining and storm water permits are obtained, in which case the inspection requirements of such permits shall apply.
4. Respondents shall properly maintain all implemented storm water controls within the unpermitted mining area and repair, replace or supplement nonfunctioning storm water controls within 24-hours of discovery.
5. Respondents agree to pay, jointly and severally, and Complainant agrees to accept a civil penalty in the amount of \$18,000. Respondents shall pay the initial \$9,000 to MDEQ within forty-five (45) days of the Effective Date. The remaining balance of \$9,000 shall be paid to MDEQ within ninety (90) days of the Effective Date. The settlement payment shall be submitted to:

Mississippi Department of Environmental Quality
Attn: Jennifer Parish
P.O. Box 2339
Jackson, MS 39225

5.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondents fail to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

6.

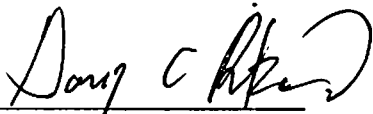
Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondents for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

7.

Respondents understand and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. § 49-17-31, and that it has made an informed waiver of that right.

ORDERED, this the 19th day of SEPTEMBER, 2014.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 
GARY C RIKARD
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 5th day of SEPTEMBER, 2014.

ROBERT ARMSTRONG, INDIVIDUALLY, AND
A AND A EXCAVATING CONTRACTORS INC

BY: Robert A. Armstrong

TITLE: PRESIDENT

STATE OF Mississippi

COUNTY OF Madison

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named ROBERT A. ARMSTRONG who first being duly sworn, did state upon his oath and acknowledge to me that he is Robert Armstrong and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 5 day of September, 2014.

Sondra Lynn Bradshaw
NOTARY PUBLIC

My Commission expires: August 6, 2017

