

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)

U.S. STEEL MINING COMPANY, LLC)
CONCORD PREPARATION PLANT)
BIRMINGHAM, ALABAMA)

NPDES # AL0003620)

ORDER NO. 00-005-CMNPS

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, and with the consent of U.S. Steel Mining Company, LLC, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following **FINDINGS**:

1. U.S. Steel Mining Company, LLC, Concord Preparation Plant (hereinafter "the Permittee") is a coal mining and coal preparation operation located at 1500 Concord Mine Road in Hueytown, Alabama.
2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.
3. On December 28, 1994, the Department reissued NPDES Permit AL0003620 (hereinafter "NPDES Permit") to the Permittee authorizing the discharge of pollutants into Valley Creek, a water of the state, which is classified for Agricultural and Industrial Water Supply, and into unnamed tributaries to Lick Creek, all waters of the state, which are classified

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for Fish and Wildlife. The NPDES Permit expires on December 31, 1999. The original NPDES Permit was issued to the Permittee on December 31, 1980.

4. The NPDES Permit was issued with outfalls 001, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, and 018. Except as provided for in A.2. of the NPDES Permit, discharges from 001, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, and 018 are subject to the following terms, conditions, and limitations, including daily minimum, daily maximum and monthly average limitations on the amounts of pollutants which may be discharged:

Parameter	Daily Minimum	Monthly Average	Daily Maximum
PH	6.0 su	N/A	9.0 su
TSS (Total Suspended Solids)	N/A	35 mg/L	70 mg/L
Manganese	N/A	2.0 mg/L	4.0 mg/L
Iron	N/A	3.5 mg/L	7.0 mg/L

Outfall 006 was, and continues to be subject to the following terms, conditions, and limitations:

Parameter	Daily Minimum	Monthly Average	Daily Maximum
BOD ₅	N/A	30.0 mg/L	45.0 mg/L
Fecal Coliforms	N/A	200 colonies/100 ml	400 colonies/100 ml
TRC	N/A	N/A	N/A
TSS	N/A	30.0 mg/L	45.0 mg/L
pH	6.0 s.u.	N/A	9.0 s.u.

5. The Permittee has violated the discharge limitations contained in the NPDES

Permit as follows:

<u>Date/Month</u>	<u>Parameter</u>	<u>Reported Value</u>	<u>Outfall</u>	<u>Violation</u>
March 11, 1996	Manganese	5.07 mg/L	008	Daily Limits
March, 1996	Manganese	2.67 mg/L	008	Monthly Avg.
August 20, 1996	pH	5.03 s.u.	009	Daily Limits
August 21, 1996	pH	5.30 s.u.	009	Daily Limits
August 22, 1996	pH	5.29 s.u.	009	Daily Limits
August 20, 1996	Manganese	11.37 mg/L	009	Daily Limits
August 21, 1996	Manganese	11.43 mg/L	009	Daily Limits
August 22, 1996	Manganese	10.93 mg/L	009	Daily Limits
August, 1996	Manganese	11.24 mg/L	009	Monthly Avg.
July, 1996	TSS	40 mg/L	017	Monthly Avg.
November 22, 1996	TSS	96 mg/L	017	Daily Limits
November, 1996	TSS	57 mg/L	017	Monthly Avg.
September 3, 1997	Manganese	4.33 mg/L	008	Daily Limits
January 12, 1998	Manganese	4.05 mg/L	008	Daily Limits
January 8, 1998	pH	5.26 s.u.	009	Daily Limits
March 11, 1998	pH	5.15 s.u.	009	Daily Limits
March 23, 1998	pH	5.00 s.u.	009	Daily Limits
January 8, 1998	Manganese	8.14 mg/L	009	Daily Limits
January, 1998	Manganese	8.14 mg/L	009	Monthly Avg.
March 11, 1998	Manganese	17.30 mg/L	009	Daily Limits
March 23, 1998	Manganese	14.35 mg/L	009	Daily Limits
March, 1998	Manganese	15.83 mg/L	009	Monthly Avg.
April 27, 1998	pH	4.59 s.u.	009	Daily Limits
May 26, 1998	pH	5.26 s.u.	009	Daily Limits
April 27, 1998	Manganese	10.92 mg/L	009	Daily Limits
April, 1998	Manganese	10.92 mg/L	009	Monthly Avg.
May 26, 1998	Manganese	8.19 mg/L	009	Daily Limits
May, 1998	Manganese	8.19 mg/L	009	Monthly Avg.
July 6, 1998	pH	5.31 s.u.	009	Daily Limits
July 6, 1998	Manganese	6.26 mg/L	009	Daily Limits
July, 1998	Manganese	6.26 mg/L	009	Monthly Avg.

6. The Permittee has failed to comply with conditions of the NPDES Permit in violation of ADEM Admin. Code R. 335-6-6-.12(a)(1).

7. Although the Permittee may not agree with the FINDINGS presented in this Consent Order, it does agree, in the spirit of cooperation and with the desire to amicably resolve this matter with the Department, not to contest this Order. In view of the aforementioned and its desire to comply with the provisions of the Alabama Water Pollution Control Act and the Federal Water Pollution Control Act and their implementing regulations, the Permittee also agrees to all the terms of this Consent Order.

8. 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 and conditions contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§22-22A-5(10), 22-22A-5(18), and 22-22-9(k) , as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That within 30 days after the issuance of this Consent Order, the Permittee shall pay to the Department a civil penalty in the amount of Eight Thousand Dollars (\$8,000.00).

B. That within fifteen (15) days after the issuance of this Consent Order, the Permittee shall submit to the Department an engineering report from a Professional Engineer registered in the State of Alabama, setting forth an explanation for the violations listed in this Order, as well as an explanation of the corrective actions to be taken to achieve compliance with the NPDES Permit and applicable regulations.

C. That within thirty (30) days after the issuance of this Consent Order, the Permittee shall submit to the Department a detailed compliance schedule, not to exceed sixty (60) calendar days, unless extended by the Department, leading to compliance with the Federal Water Pollution Control Act and the Alabama Water Pollution Control Act and detailing actions to be taken, in accordance with the engineering report required in item B above, to correct the violations set forth herein and to prevent future violations of the NPDES Permit and applicable regulations.

D. That within seventy-five (75) days after the issuance of this Consent Order, the Permittee shall submit to the Department certification by a Professional Engineer (P.E.), registered in the State of Alabama, that all corrective actions have been completed in accordance with the engineering report required in item B. above, to achieve compliance with this Consent Order and with all conditions of the NPDES permit and applicable regulations, for the entire Concord Preparation Plant facility, unless an extension is granted in writing by the Department.

E. That within sixty (60) days after the issuance of this Consent Order, the Permittee shall submit an application for permit modification to add limitations for Total Residual Chlorine as a parameter to the NPDES Permit for outfall 006.

F. That the Permittee shall immediately and thereafter comply with the terms and conditions of its NPDES permit and applicable regulations, except as provided in any ADEM approved compliance schedule.

G. That unless there has been a written modification by the Department of any deadline, corrective action plan, compliance schedule, or other requirement to be met in this

Consent Order, if the Permittee violates any of the terms of this Order, the Permittee shall become liable for stipulated penalties as follows:

1. For each failure to submit or late submittal of complete Discharge Monitoring Reports (DMRs) required by the NPDES Permit, during the consecutive 12 month period immediately following the effective date of this Consent Order, the Permittee shall pay a stipulated penalty of Five Hundred Dollars (\$500.00). A submittal of complete Discharge Monitoring Reports (DMRs) shall be considered late if not postmarked by the 28th day of the month following the end of the reporting quarter. For the purposes of this Consent Order, the failure to submit or late submittal of a DMR shall constitute a single violation, regardless of the length of delay in making such submission.
2. For the discharge into waters of the State of effluent that has a pH greater or less than the allowable permit limits during the consecutive 12 month period immediately following the effective date of this Consent Order, the Permittee shall pay a stipulated penalty to the Department in the amount of Three Hundred Fifty Dollars (\$350.00) for each day or portion of a day for which there is such a discharge.
3. For the discharge into waters of the State of effluent in exceedance of the NPDES Permit limits for Iron, Manganese, Total Suspended Solids, BOD₅, and/or Fecal Coliforms during the consecutive 12 month period immediately following the effective date of this Consent Order, the Permittee shall pay a stipulated penalty to the Department in the amount of Three Hundred Fifty Dollars (\$350.00) for each day or portion of a day for which a discharge is not within the limitations allowed by the NPDES Permits.

4. For the violation of any applicable State water quality standard, in which the Permittee causes or contributes to, during the consecutive 12 month period immediately following the effective date of this Order, the Permittee shall pay a stipulated penalty to the Department in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per day for each violation of a State water quality standard.

5. Penalties shall begin to accrue on the day after the complete performance is due or on the day a violation occurs, and shall continue to accrue through the day performance is completed or for each day during which there is a violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order. Penalties shall accrue regardless of whether the Department has notified the Permittee of a violation. Stipulated penalties assessed pursuant to this Consent Order shall not exceed a maximum aggregate of \$10,000. Any other provision or term of this Consent Order notwithstanding, the stipulated penalties and limitations thereto found in this Consent Order for violations of this Consent Order are applicable only to such violations that occur prior to the expiration of the consecutive 12 month period immediately following the effective date of this Order, or until such time \$10,000 in stipulated penalties has been assessed. Violations of this Consent Order that occur or continue beyond the 12 month period immediately following the effective date of this Consent Order or after assessment of \$10,000 accumulated stipulated penalty are specifically subject to separate, additional enforcement by the Department, including the possible assessment of penalties for said violations.

All penalties owed to the Department under this condition shall be due and payable on the 15th day of each month after the month in which the violation(s) occurred and shall be

accompanied by an accounting of the violations giving rise to the stipulated penalties. All penalties shall be made payable by certified or cashier's check to the Alabama Department of Environmental Management and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463**

All Checks shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

H. 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 on behalf of the party represented and to legally bind such party.

I. 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 and final resolution of the violations of the NPDES Permit and applicable regulations, which are cited in this Order.

J. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

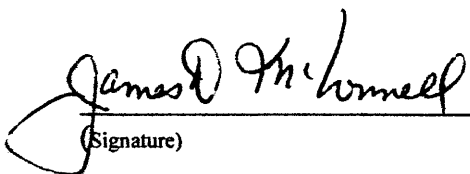
K. That for purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Permittee also agrees that in any action brought by the Department to

compel compliance with the terms of this Consent Order, the Permittee shall be limited to the defenses of Force Majeure, compliance with the terms and conditions of this Consent Order and physical impossibility.

L. 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. This Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the Permittee, which would constitute possible violations not addressed in this Order, then such future violations shall be addressed in Orders or litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.


M. 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.

ORDERED and ISSUED this 7th day of October, 1999.


(Signature)

JAMES D. McConnell VP
(Please Print Name and Title of Authorized Officer)

U.S. Steel Mining Company, LLC


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