

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MCWANE COAL CO., INC.
1927 FIRST AVENUE NORTH
SUITE 900
BIRMINGHAM, AL 35203

ORDER NO. 89-046-WP

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 et seq. (1984 and 1988 Supp.), the Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 et seq. (1984 and 1988 Supp.), 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, the Department makes the following FINDINGS OF FACT:

1. McWane Coal Company, Inc. (hereinafter, "McWane") owns a coal washing facility known as the Dilworth Washer which is adjacent to the Mulberry Fork of the Black Warrior River. McWane has neither applied for nor obtained a currently valid NPDES permit for the Dilworth Washer.

ISSUED 2/3/89	SERVED 2/8/89
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2. On December 14, 1987, the Department collected water samples down gradient from the Dilworth Washer which were found to have pH levels and concentrations of total iron and manganese in excess of that which is permitted for such facilities.

3. On December 22, 1987, the Department issued a Notice of Violation (NOV) to McWane which required that it submit a plan for eliminating the discharges or apply for a permit.

4. McWane responded to the NOV by proposing that a dye test be conducted to determine if discharges were occurring. The Department, by certified letter dated March 31, 1988, agreed to postpone the requirements of the NOV pending the results of the dye test if several conditions were met.

5. Among the conditions imposed by the Department was the requirement that Rhodamine WT dye be used.

6. Also among the conditions imposed by the Department was the requirement that McWane allow the Department to conduct an independent study to verify the results of the dye test. McWane has violated this condition by intentionally removing and destroying the Department's testing equipment.

7. An additional condition of the test was that the results were to be submitted to the Department by September 17, 1988.

8. McWane has violated this condition by failing to submit the results at the required time.

9. The Department, by certified letter dated December 23, 1988, made a demand for the delinquent report on the Rhodamine WT test.

10. McWane, through its attorney, has refused to submit the results of the Rhodamine WT test.

11. McWane, upon analyzing the results of the Rhodamine WT test, unilaterally decided to change the parameters of the dye monitoring test. Among the changed parameters was the substitution of Lithium for Rhodamine as the trace element.

ORDER

Based upon the foregoing FINDINGS OF FACT and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22-9(c), (e), (i), and (k) (1988 Supp.) and the National Pollutant Discharge Elimination System administered by the Department and approved by the Administrator of the U.S. Environmental Protection Agency under the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, it is hereby ORDERED:

A. That McWane submit the certified results of the Rhodamine WT test conducted by Paragon Engineering at the Dilworth Washer not later than 5 days after receipt of notice of this Order. The certification is to be made by the engineer conducting the test.

B. That within 15 days of notice of receipt of this Order, McWane submit to the Department either:

1. A plan, prepared in accordance with ADEM Admin. Code Chapter 6-3 by a professional engineer licensed in Alabama, for ending all discharges from the Dilworth Washer to surface or groundwater except those which may occur from a precipitation event greater than a 10 year/24 hour precipitation event; or

2. A complete NPDES permit application for the normally occurring discharges at the Dilworth facility. Said application will be supported by an engineering plan and report, prepared in accordance with ADEM Admin. Code Chapter 6-3 by a professional engineer licensed to practice in Alabama, which demonstrates the treatment method to be used.

C. That if McWane chooses to submit a plan for the cessation of discharges, a complete NPDES permit application for discharges resulting from precipitation events greater than a 10 year/24 hour precipitation event shall also be submitted. Said application shall be supported by an engineering plan and report, prepared in accordance with ADEM Admin. Code Chapter 6-3 by a professional engineer licensed to practice in Alabama, which demonstrates the treatment method to be used.

D. That if McWane submits said plan, the provisions of said plan will be fully implemented within 60 days of the date of submission to the Department. McWane shall submit to the Department the written certification of the design engineer which verifies complete implementation of the plan.

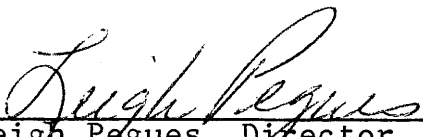
E. That within 5 days of receipt of notice of this Order, McWane will submit the certified results of the Lithium test. The certification is to be made by the engineer conducting the test.

F. That the failure of McWane to comply with any of the provisions of this Order shall constitute cause for the

commencement of legal action for the recovery of civil penalties, criminal fines, or other appropriate relief.

G. That the issuance of this Order does not preclude the Department from seeking civil penalties, criminal fines, or other appropriate relief against McWane for the violations stated herein.

ORDERED and ISSUED this 3rd day of February, 1989.



Leigh Pegues, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickinson Drive
Montgomery, Alabama 36130
(205) 271-7700

CERTIFICATE OF SERVICE

I, G. Keith Clark, hereby certify that I have served Order No. 89-046-WP upon McWane Coal Co., Inc. by sending the same, postage paid, through the U.S. Mail, as Certified Mail No. P 966 410 304, with instructions to forward and return receipt requested to:

John C. Fay, Jr.
McWane Coal Company, Inc.
1927 First Avenue North
Suite 900
Birmingham, Alabama 35203

Done this 3rd day of February, 1989.



G. Keith Clark