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May 29, 2015

CERTIFIED MAIL No. 7013 1710 0000 4341 0552
Return Receipt Requested

Mr. Roger W. Perry, President
Black Warrior Minerals, Inc.
829 Reynolds Crest
Birmingham, AL 35242

Re: **60-Day Notice of Intent to File Citizen Suit Under the Clean Water Act and Surface Mining Control and Reclamation Act for Violations at Fleetwood Mine**

Dear Mr. Perry:

Black Warrior Riverkeeper and Friends of Hurricane Creek (collectively "Waterkeepers"), together with individuals John Wathen and Nelson Brooke, intend to file a lawsuit under § 505 of the Clean Water Act ("CWA"), 33 U.S.C. §1365, against Black Warrior Minerals, Inc. ("BWM") for violations of the CWA and NPDES Permit No. AL0071358, as more fully set out below. In addition, Waterkeepers intend to file a lawsuit against BWM under § 520 of the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. § 1270, to compel compliance with rules and regulations issued pursuant to SMCRA § 503, 30 U.S.C. § 1253.

All of the violations identified above occurred at the Fleetwood Mine (a/k/a Seaboard Mine & Fleetwood Mine No. 1) located in Tuscaloosa County, Alabama (Township 21 South, Range 8 West, Sections, 3 through 5, 7 through 9 and 16 through 18; and Township 20 South, Range 8 West, Section 34). Based upon information and belief, BWM owns and operates the Fleetwood Mine where these violations are occurring. Waterkeepers, Brooke and Wathen provide this notice pursuant to 40 C.F.R. Part 135, Subpart A, and 30 C.F.R. § 700.13.

These violations are especially serious and concerning because Hurricane Creek was identified as impaired for aluminum, iron, and turbidity in 1998; the sources of pollution were listed as "surface mining abandoned" and land development. *See* Alabama's Final 1998 303(d) List.¹ Impaired waters are waters that are in violation of the Alabama water quality criteria or "are not supporting their designated

¹ <http://adem.alabama.gov/programs/water/wquality/1998AL303dList.pdf>

use.” See *Alabama Dept. of Env'tl. Mgmt. v. Alabama Rivers Alliance, Inc., and Friends of Hurricane Creek*, 14 So.3d 853, 858-59 (Ala. Civ. App. 2007). Although EPA developed and implemented Total Maximum Daily Loads (“TMDLs”)² for these pollutants in 2004, Hurricane Creek has yet to return to health, in part because of poor surface mining practices (like those identified at Fleetwood Mine) which contribute to and exacerbate the damage caused by prelaw mining.

I. Clean Water Act Violations

BWM is in violation of § 301 of the CWA (33 U.S.C. §§ 1311). This provision mandates that the Fleetwood Mine shall not discharge pollutants to waters of the United States except in compliance with any permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”).

On October 19, 1979, the Administrator of the U.S. Environmental Protection Agency approved the State of Alabama’s NPDES permit program pursuant to CWA § 402(b), 33 U.S.C. § 1342(b). See 44 Fed. Reg. 61452 (1979). On July 24, 2009, BWM was reissued NPDES Permit No. AL0071358 by the Alabama Department of Environmental Management (“ADEM”) which limits the discharge of pollutants from multiple point sources (outfalls) at the Fleetwood Mine into Hurricane Creek and unnamed tributaries of Hurricane Creek, which are waters of the United States.

Through February 28, 2014, absent specifically claimed exemptions, that permit provides the following discharge limitations at all outfalls. For Iron (Fe), the permit specifies a Daily Average³ of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Daily Average (identical to a Monthly Average) of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Daily Average (identical to a Monthly Average) of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u.

On February 27, 2014, BWM was again reissued NPDES Permit No. AL0071358 by the Alabama Department of Environmental Management (“ADEM”) which limits the discharge of pollutants from multiple point sources (outfalls) at the Fleetwood Mine into Hurricane Creek and unnamed tributaries of Hurricane Creek, which are waters of the United States.

After February 28, 2014, absent specifically claimed exemptions, the reissued permit provides the following discharge limitations at the following outfalls.

² [TMDL for Metals, Pathogens and Turbidity in the Hurricane Creek Watershed \(October 2004\)](#)

³ What is characterized as a “Daily Average” under the 2009 NPDES permit is identical to the value characterized as a “Monthly Average” under the 2014 NPDES permit. Daily average limitations are often characterized as “monthly average” limits, e.g., an average of daily values over a one-month period, to better distinguish them from “daily maximum” limits. See *Atlantic States Legal Found., Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128, 1138 n.20 (1990) (“For purposes of discussion, a violation of the daily average will be referred to as a ‘monthly violation’ to differentiate it from a ‘daily violation’ which refers to a violation of a daily maximum.”)

At Outfalls 001-1 through 003-1 and 006-1 through 010-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Nickel (Ni) the permit specifies a Monthly Average of 412.5 µg/L and a Daily Maximum of 3.4 mg/L . For Mercury (Hg) the permit specifies a Monthly Average of 0.10 µg/L and a Daily Maximum of 16.1 µg/L.

At Outfall 005-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Selenium (Se), the permit specifies a Monthly Average of 5.0 µg/L and a Daily Maximum of 20.0 µg/L. For Nickel (Ni) the permit specifies a Monthly Average of 57.2 µg/L and a Daily Maximum of 515.8 µg/L . For Copper (Cu) the permit specifies a Monthly Average of 12.76 µg/L and Daily Maximum of 18.02 µg/L. For Free Available Cyanide (Cn) the permit specifies a Monthly Average of 5.2 µg/L and a Daily Maximum of 22.0 µg/L. For Mercury (Hg) the permit specifies a Monthly Average of 0.012 µg/L and a Daily Maximum of 2.4 µg/L.

At Outfall 011-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Selenium (Se), the permit specifies a Monthly Average of 5.0 µg/L and a Daily Maximum of 20.0 µg/L. For Nickel (Ni) the permit specifies a Monthly Average of 57.2 µg/L and a Daily Maximum of 515.8. µg/L. For Copper (Cu), the permit specifies a Monthly Average of 12.76 µg/L and a Daily Maximum of 18.02 µg/L . For Free Available Cyanide (CN) the permit specifies a Monthly Average of 5.2 µg/L and a Daily Maximum of 22.0 µg/L. For Mercury (Hg) the permit specifies a Monthly Average of 0.012 µg/L and a Daily Maximum of 2.4 µg/L.

At Outfalls 012-1 through 022-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the

permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Selenium (Se), the permit specifies a Monthly Average of 5.0 µg/L and a Daily Maximum of 20.0 µg/L. For Thallium, the permit specifies a Monthly Average of 0.274 µg/L. For Nickel (Ni), the permit specifies a Monthly Average of 57.2 µg/L and a Daily Maximum of 515.8 µg/L. For Cadmium (Cd), the permit specifies a Monthly Average of 0.644 µg/L and a Daily Maximum of 4.34 µg/L. For Copper (Cu), the permit specifies a Monthly Average of 12.76 µg/L and a Daily Maximum of 18.02 µg/L. For Trivalent Dissolved Arsenic, the permit specifies a monthly average of 0.397 µg/L and a Daily Maximum of 592.3 µg/L. For Free Available Cyanide (CN), the permit specifies a Monthly Average of 5.2 µg/L and a Daily Maximum of 22.0 µg/L. For Mercury (Hg) the permit specifies a Monthly Average of 0.012 µg/L and a Daily Maximum of 2.4 µg/L.

At Outfalls 023-1 and 024-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Selenium (Se), the permit specifies a Monthly Average of 5.0 µg/L and a Daily Maximum of 20.0 µg/L. For Thallium, the permit specifies a Monthly Average of 0.274 µg/L. For Nickel (Ni) the permit specifies a Monthly Average of 57.2 µg/L and a Daily Maximum of 515.8. µg/L. For Cadmium (Cd), the permit specifies a Monthly Average of 0.644 µg/L and a Daily Maximum of 4.34 µg/L. For Copper (Cu), the permit specifies a Monthly Average of 12.76 µg/L and a Daily Maximum of 18.02 µg/L. For Free Available Cyanide (CN), the permit specifies a Monthly Average of 5.2 µg/L and a Daily Maximum of 22.0 µg/L. For Mercury (Hg) the permit specifies a Monthly Average of 0.012 µg/L and a Daily Maximum of 2.4 µg/L.

At Outfall 025-1: for Turbidity, the permit specifies a Daily Maximum of 51 Nephelometric Turbidity Units (NTUs). For Iron (Fe), the permit specifies a Monthly Average of 3.0 mg/L, a Daily Maximum of 6.0 mg/L, and a 4-day average of 3.45 mg/L. For Manganese (Mn), the permit specifies a Monthly Average of 2.0 mg/L and a Daily Maximum of 4.0 mg/L. For Total Suspended Solids (TSS), the permit specifies a Monthly Average of 35.0 mg/L and a Daily Maximum of 70.0 mg/L. For pH, the permit specifies a Daily Minimum of 6.0 s.u. and a Daily Maximum of 8.5 s.u. For Selenium (Se), the permit specifies a Monthly Average of 5.0 µg/L and a Daily Maximum of 20.0 µg/L. For Nickel (Ni) the permit specifies a Monthly Average of 57.2 µg/L and a Daily Maximum of 515.8. µg/L. For Copper (Cu), the permit specifies a Monthly Average of 12.76 µg/L and a Daily Maximum of 18.02 µg/L. For Free Available Cyanide (CN), the permit specifies a Monthly Average of 5.2 µg/L and a Daily Maximum of 22.0 µg/L. For Mercury (Hg) the permit specifies a Monthly Average of 0.012 µg/L and a Daily Maximum of 2.4 µg/L.

1. Clean Water Act: NPDES Permit Violations

BWM has violated the discharge limitations of NPDES Permit No. AL0071358 on the dates set out in Table I attached hereto. The violations listed were reported by Black Warrior Minerals on monthly Discharge Monitoring Reports which BWM files with ADEM on a quarterly basis.

In addition to the violations listed above, independent sampling by Black Warrior Riverkeeper Nelson Brooke identified additional violations of the discharge limitations of NPDES Permit No. AL0071358 on the dates set out in Table II attached hereto.

Upon information and belief, Waterkeepers, Brooke and Wathen believe that BWM is in continuing and/or intermittent violation of NPDES Permit No. AL0071358 and § 301 of the CWA (33 U.S.C. § 1311), which mandate that the Fleetwood Mine shall not discharge pollutants to waters of the United States except in compliance with an NPDES permit.

2. Clean Water Act: Unpermitted Discharge Violations

BWM is also in violation of § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), because it is discharging pollutants at the Fleetwood Mine without an NPDES permit. Section 301(a) of the CWA, 33 U.S.C. 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with the terms of an NPDES permit issued by the EPA or an authorized State pursuant to § 402 of the CWA, 33 U.S.C. § 1342.

Waterkeepers have identified seventeen unpermitted seeps discharging in the vicinity of the following outfalls: between DSN-001 & DSN-002 (Seep 001/002, which discharges out of hillside between DSN-001 & DSN-002; DSN-002 (Seep 002, which discharges out of Sediment Pond 002 dam on left side of spillway over halfway up from bottom of dam); DSN-004 (Seep 004, which discharges under the toe of the spillway at Sediment Pond 004); DSN-005 (Seep 005, which discharges from under two large boulders in the Goree Coal Bed Branch drainage @ N 33° 13.125' W 87° 24.500', where it was sampled); DSN-009 (Seep 009, which discharges under the dam toe of Sediment Pond 009 and rocks below outfall pipe); DSN-010 (Seep 010, which discharges under and around the toe of the spillway at Sediment Pond 010); DSN-011 (Seep 011, which discharges under the toe of the spillway and from the dam toe on both sides of the spillway); DSN-013 (Seep 013, which discharges in the drainage below the proposed site of Sediment Pond 013); DSN-014 (Seep 014, which discharges under the toe of the spillway at Sediment Pond 014); DSN-015 (Seep 015, which discharges under, at the bottom edge of, and from the left edge of the toe of the spillway at Sediment Pond 015); DSN-019 (Seep 019, which discharges out of a PVC pipe under the toe of the spillway at Sediment Pond 019); DSN-020 (Seep 020-A, which discharges from beneath a rock placed by mining fill within a drainage, located downgradient of Sediment Pond 020 @ N 33° 14.696' W 87° 23.546'); there is also another seep in the same drainage as Seep 020-A, which we documented; and DSN-020 (Seep 020-B, which discharges into

Sniders Spring Branch from rock strata within a badly eroded gully located downgradient of Sediment Pond 020's outfall (@ N 33° 14.708' W 87° 23.515'); there was also another seep coming out of the right side of the gully, which we documented; there was also another seep coming out of the wooded hillside halfway between the creek and the mine's edge upstream of DSN-020 on Sniders Spring Branch, which we documented; and DSN-025 (Seep 025, which discharges under the toe of the spillway at Sediment Pond 025).

Each of these seeps is discharging pollutants from breaches in the identified sediment ponds that flow to waters of the United States, namely unnamed tributaries to Sniders Spring Branch; Sniders Spring Branch; Ruhama Church Branch; Goree Coal Bed Branch; unnamed tributaries to Hurricane Creek; and Hurricane Creek. Sniders Spring Branch, Ruhama Church Branch, and Goree Coal Bed Branch are tributaries to Hurricane Creek, which is tributary of the Black Warrior River. Riverkeeper sampled downstream of eleven of the seventeen unpermitted seep discharges and analyzed for pH, total suspended solids, total dissolved solids, turbidity, sulfate, conductivity, manganese, iron, thallium, nickel, aluminum, cadmium, copper, mercury, arsenic, cyanide, and selenium. Those samples returned the results set out in Table III attached hereto.

BWM does not hold a valid NPDES permit for the discharge of pollutants from any of the seeps identified above. These seeps are each point sources pursuant to the CWA, 33 U.S.C. § 1362(14), in that the seep discharges occur by means of discernible, confined and discrete conveyances. Because of these unpermitted discharges, BWM is in violation of the CWA's prohibition on the discharge of pollutants without a permit. 33 U.S.C § 1311.

Upon information and belief, Waterkeepers believe that BWM is in continuing and/or intermittent violation of the prohibition on the discharge of pollutants from a point source without a permit from the seventeen identified seeps.

3. *Clean Water Act: Violations of Other Permit Conditions*

Part II.A.(7) of NPDES Permit No. AL0071358, "Duty to Mitigate," provides that BWM 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" BWM is required by Part II.D.1.g. of NPDES Permit No. AL0071358, "Duty to Comply," to "take all reasonable steps, to include cessation of production or other activities, to minimize or prevent any adverse impact of any permit violation."

The noncompliant discharges and permit violations by BWM identified herein have resulted in adverse impacts to the receiving waters that BWM has failed to minimize, mitigate or prevent. Sediment and other pollutants discharged from the Fleetwood Mine have settled out of the water column onto the substrate of receiving waters, forming what is known as armoring. Armoring binds to stream bottoms,

rocks, and wood forming a hardened, impermeable coating on the substrate, which builds up as thick, impermeable deposits in the affected streams. These solids can coat stream bottoms, smother aquatic life and destroy stream habitat.

Waterkeepers have documented offsite armoring in the receiving waters below each of the following fourteen locations: DSN-001; seep between DSN-001 & DSN-002; DSN-002; DSN-004; DSN-005; DSN-006; DSN-009; DSN-010; DSN-011; vicinity of proposed DSN-013; DSN-014; DSN-015; DSN-018; and DSN-019. See Table IV. Waterkeepers sampled sediment at five of these fourteen locations. The test results from those samples are set out in Table IV. Upon information and belief, BWM has not taken any actions to minimize, mitigate or prevent the adverse impacts of its noncompliant discharges as catalogued by Table IV.

In failing to address the armoring from BWM's noncompliant discharges at the Fleetwood Mine, BWM has failed to meet the conditions of NPDES Permit No. AL0071358 to take required "reasonable steps" to mitigate, minimize or prevent adverse impacts from its noncompliant discharges and/or permit violations. All of the violations referenced above demonstrate a continuing pattern of pollution at the Fleetwood Mine which has occurred in the past and is likely to continue in the future. This pattern of pollution degrades and threatens waters of the United States. Waterkeepers intend to pursue these and similar or related permit violations, including all violations which occur or continue after service of this notice and all violations revealed in the course of the litigation discovery process.

II. Surface Mining Control and Reclamation Act Violations

Pursuant to SMCRA § 503, 30 U.S.C. § 1253, the State of Alabama issued rules and regulations to provide for the regulation of surface coal mining and reclamation operations consistent with regulations issued by the Secretary of the Interior under SMCRA and, on January 11, 1982, submitted a surface coal mining and reclamation regulatory program to the Secretary of the Interior for review. Included in Alabama's surface coal mining and reclamation regulatory program is are environmental protection performance standards applicable to surface coal mines promulgated by the Alabama Surface Mining Commission.

1. Surface Mining Control and Reclamation Act: Violation of Performance Standards (Water Quality Effluent Limitation Violations)

One such environmental protection performance standard applicable to surface coal mines is Ala. Admin. Code r. 880-X-10C-.13(5) which provides that "[d]ischarges of water from areas disturbed by mining activities shall be made in compliance with all applicable State and Federal water quality effluent limitation guidelines for coal mining." State water quality regulations require that all discharges of pollutants to state waters shall be permitted and shall comply with all permit conditions. Ala. Admin. Code r. 335-6-6-.03(1) and r. 335-6-6-.12(a). Such permit conditions are required to include effluent limitations and standards promulgated under §§ 301 and 306 of the CWA, 33 U.S.C. §§ 1311 and 1316,

and any more stringent limitations necessary to protect water quality consistent with the requirements of any applicable Total Maximum Daily Load allocation established under § 303(d) of the CWA, 33 U.S.C. § 1313(d). Ala. Admin. Code r. 335-6-6-.14(3)(a) and r. 335-6-6-.14(3)(e)8.

By discharging iron, manganese, thallium, total suspended solids, turbid water and pH in excess of the effluent limitations and guidelines included in NPDES Permit No. AL0071358 at the Fleetwood Mine, BWM is in violation of performance standards developed under SMCRA. See Ala. Admin. Code r. 880-X-10C-.13(5). Accordingly, the NPDES permit violations set out in Tables I and II and the seep discharges set out in Table III are also violations of SMCRA, § 503, 30 U.S.C. § 1253.

2. Surface Mining Control and Reclamation Act: Violation of Performance Standards (Sediment Control Measures and Siltation Structures)

As another performance standards developed under SMCRA, the ASMC adopted Ala. Admin. Code r. 880-X-10C-.16, which provides that

[a]ppropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

- (a) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,
- (b) Meet the more stringent of applicable State or Federal effluent limitations,
- (c) Minimize erosion to the extent possible.

Ala. Admin. Code r. 880-X-10C-.16 (1). In addition, siltation structures must be designed so that

- (a) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.
- (b) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area

Ala. Admin. Code r. 880-X-10C-.17(2).

The identification of at least seventeen seeps near Fleetwood Mine's sediment ponds which are (1) contributing additional pollutants to streamflow or runoff; and (2) violating applicable State and/or federal effluent limitations, and are violations of the performance standards developed under SMCRA. See Ala. Admin. Code r. 880-X-10C-.16 through .17. BWM's design, construction and maintenance of sediment control measures and other BMPs at Fleetwood Mine are not adequate to prevent additional contributions of pollutants through the seeps which flow to unnamed tributaries to Sniders Spring

Branch, Sniders Spring Branch, Ruhama Church Branch, Goree Coal Bed Branch, unnamed tributaries to Hurricane Creek, and Hurricane Creek. In addition, most of the seeps are flowing through sediment pond dam toes, where they are not being properly routed through an approved NPDES outfall; and some of the seeps are bypassing sediment ponds, where they are not being properly routed through an approved NPDES sediment pond.

BWM is in violation of performance standards developed under SMCRA by not implementing and/or maintaining adequate sediment control measures and siltation structures. See Ala. Admin. Code r. 880-X-10C-.16 through .17. Accordingly, the NPDES permit violations set out in Tables I and II and the seep discharges set out in Table III are also violations of performance standards developed under SMCRA, § 503, 30 U.S.C. § 1253.

3. *Surface Mining Control and Reclamation Act: Violation of Performance Standards (Protection of Environmental Values and Water Quality)*

The ASMC also developed performance standards under SMCRA designed to protect environmental values and water quality at the mine site. “Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that . . . prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution.” Ala. Admin. Code r. 880-X-10C-.12 (4)(a). In addition,

[d]ischarge from sedimentation ponds permanent and temporary impoundments, coal processing waste, dams and embankments, and diversions shall be controlled, by energy dissipaters, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

Ala. Admin. Code r. 880-X-10C-.18. Finally, “the operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable. Ala. Admin. Code r. 880-X-10C-.49(1).

BWM has not protected water quality at Fleetwood Mine. Instead, BWM has handled earth materials, groundwater discharges, runoff, and surface water discharges in a manner that allows the contribution of suspended solids and other pollutants to Sniders Spring Branch, Ruhama Church Branch, Goree Coal Bed Branch, unnamed tributaries to Hurricane Creek, and Hurricane Creek. Ala. Admin. Code r. 880-X-10C-.12 (4)(a). Moreover, BWM has not properly controlled pumped diversions from DSN-021 and discharges from Sediment Pond 020 with the use of energy dissipation, such as a rip-rap lined channel, and other BMPs to reduce erosion, to prevent scouring and enlargement of stream

channels, and to minimize disturbance of the hydrologic balance in groundwater and in the receiving stream. Ala. Admin. Code r. 880-X-10C-.18.

BWM's operations at Fleetwood Mine have caused a significant hillside collapse, or slumping, near Sniders Spring Branch. The bank slump runs for hundreds of feet along and parallel to Sniders Spring Branch between Outfalls DSN-020 and DSN-021. Upon information and belief, BWM is pumping water from the sediment pond at DSN-021 to the sediment pond at DSN-020. However, the pipe that carries the water does not discharge into DSN-020; instead, the pipe discharges onto the ground upgradient of the sediment pond at DSN-020 and Sniders Spring Branch. The pumped water is not all making its way into the sediment pond at DSN-020; rather, much of it is seeping into the ground, which is allowing the water to flow underground, along rock strata, and ultimately out of the hillside along Sniders Spring Branch. This unnatural saturation of the hillside has caused the hillside to slump. There are noticeable fissures in the hillside and seeps flowing to Sniders Spring Branch. Some trees that line Sniders Spring Branch are tilted downhill toward the stream because their root structures have been uprooted by the slump. It is likely in the near future that total collapse of the hillside into Sniders Spring Branch could occur, should this pumping activity, as operated, continue. Energy dissipation at outfall DSN-020 has not been properly employed, and therefore the creek bank below this outfall is eroding badly. A large gully, at least 10 feet deep, has formed where the discharge enters Sniders Spring Branch, exposing the bedrock beneath the soil. Debris and sizeable rocks are being flushed into the receiving stream.

In not handling earth materials, groundwater discharges, runoff, and surface water discharges in a manner that prevents the contribution of suspended solids and other pollutants offsite, BWM is in violation of performance standards developed under SMCRA. *See* Ala. Admin. Code r. 880-X-10C-.13(5); Ala. Admin. Code r. 880-X-10C-.12 (4)(a); Ala. Admin. Code r. 880-X-10C-.18; and Ala. Admin. Code r. 880-X-10C-.49(1). Accordingly, the violations of applicable performance standards described herein are also violations of SMCRA, § 503, 30 U.S.C. § 1253.

4. Surface Mining Control and Reclamation Act: Violation of Performance Standards (Surface Mining Activities within 100 feet of a Perennial or Intermittent Stream)

Also pursuant to SMCRA, the Alabama Surface Mining Commission adopted Ala. Admin. Code r. 880-X-10C-.28, which prohibits surface mining activities within 100 feet of a perennial stream or an intermittent stream, unless the Alabama Surface Mining Commission specifically authorizes surface mining activities closer to, or through, such a stream. BWM has violated Ala. Admin. Code r. 880-X-10C-.28 by performing mining activities between DSN-019 & DSN-020 within 100 feet of Sniders Spring Branch, a perennial stream as characterized by the U.S. Department of Interior's 2014 U.S. Geological Survey's 7.5 minute series map of the Cottondale Quadrangle. Upon information and belief, the ASMC has not specifically authorized BWM to engage in surface mining activities at Fleetwood Mine closer than 100 feet to Sniders Spring Branch. Despite the fact that applicable performance

standards prohibit mining within 100 feet of Sniders Spring Branch, a perennial stream, and the fact that the ASMC has not specifically authorized BWM to perform mining activities within 100 feet of Sniders Spring Branch, BWM has performed and continues to perform mining activities within 100 feet of Sniders Spring Branch (at GPS N 33° 14.619' W 87° 23.606') in violation of Ala. Admin. Code r. 880-X-10C-.28.

In performing surface mining activities within 100 feet of a perennial stream, BWM is in violation of performance standards developed under SMCRA. *See* Ala. Admin. Code r. 880-X-10C-.28. Accordingly, the violations of applicable performance standards described herein are also violations of SMCRA, § 503, 30 U.S.C. § 1253.

III. Relief Requested

Waterkeepers, Brooke and Wathen will request, among other remedies, a judgment declaring the discharges or violations described or listed herein to be unlawful; declaring that BWM violated and is in continuing violation of the CWA and SMCRA; enjoining BWM from operating Fleetwood Mine in such a manner as will result in further violations of the CWA and SMCRA, including unpermitted discharges; ordering BWM to immediately comply with the terms and conditions of its NPDES permit AL0071358; ordering BWM to immediately comply with the terms and conditions of its ASMC Permits P-3937 and P-3810, including all applicable performance standards; ordering BWM to immediately end the seep discharges to unnamed tributaries of Sniders Springs Branch, to Sniders Springs Branch, Ruhama Church Branch, Goree Coal Bed Branch, and unnamed tributaries to Hurricane Creek, and Hurricane Creek; and prohibiting BWM from performing mining activities within 100 feet of Sniders Spring Branch. Waterkeepers, Brooke and Wathen intend to pursue these and similar or related violations, including all violations which occur or continue after service of this notice and all violations revealed in the course of the litigation discovery process.

Additionally, Waterkeepers, Brooke and Wathen will seek the imposition of civil penalties. The maximum penalty that could be imposed against BWM under the CWA is \$37,500.00 per violation. *See* 40 C.F.R. Part 19. In addition, if successful in the prosecution of this suit, Waterkeepers, Brooke and Wathen intend to seek an award of the costs of litigation (including reasonable attorney and expert witness fees) under 33 U.S.C. § 1365 and/or 30 U.S.C. § 1270(d).

The persons giving this notice are Black Warrior Riverkeeper, 712 37th Street South, Birmingham, Alabama 35222-3206, Friends of Hurricane Creek, P.O. Box 40836, Tuscaloosa, Alabama 35404, Nelson Brooke, 712 37th Street South, Birmingham, Alabama 35222-3206, and John Wathen, P.O. Box 40836, Tuscaloosa, Alabama 35404. The attorney for Black Warrior Riverkeeper and Nelson Brooke is Eva Dillard, Staff Attorney, Black Warrior Riverkeeper, Inc., 712 37th Street South, Birmingham, Alabama 35222-3206, telephone number (205) 458-0095. The attorney for Friends of Hurricane Creek and John Wathen is David A. Ludder, 9150 McDougal Court, Tallahassee, Florida

32312-4208, telephone number (850) 356-5671. Please direct all correspondence to the attention of Ms. Dillard and Mr. Ludder.

We are prepared to discuss the issues raised in this letter at any time. Our preference always is to work with you to address the environmental compliance concerns we have identified at your facility. If you think it might be productive, we would be glad to meet with you and your counsel to discuss possible solutions and remedies.

Please know that we appreciate your attention to this matter and we look forward to hearing from you.

Sincerely,



Eva Dillard
Attorney for
Black Warrior Riverkeeper, Inc.
and Nelson Brooke



David A. Ludder
Attorney for
Friends of Hurricane Creek
and John Wathen

cc: Gina McCarthy, Administrator
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Loretta E. Lynch, Attorney General,
Department of Justice
c/o Citizen Suit Coordinator, Room 2615
Washington, DC 20530

**Table I – Self-Reported NPDES Permit Violations
Fleetwood Mine (AL0071358)**

Date	Outfall	Parameter	Permit Limit	Discharge	Number of Violations
9/4/2012	006	TSS Daily Maximum	70.0 mg/L	336 mg/L	1
January 2013	011	TSS Monthly Average	35.0 mg/L	67 mg/L	31
1/30/2013	011	TSS Daily Maximum	70.0 mg/L	225 mg/L	-
1/30/2013	011	Iron (Fe) Daily Maximum	6.0 mg/L	6.21 mg/L	1
July 2013	009	Iron (Fe) Monthly Average	3.0 mg/L	4.36 mg/L	31
7/24/2013*	011	Iron (Fe) Daily Maximum	7.0 mg/L	6.50 mg/L	-
December 2013	015	TSS Monthly Average	35.0 mg/L	51 mg/L	31
12/30/2013	015	TSS Daily Maximum	70.0 mg/L	82 mg/L	-
December 2013	015	Iron (Fe) Monthly Average	3.0 mg/L	3.44 mg/L	31
December 2013	019	TSS Monthly Average	35.0 mg/L	39 mg/L	31
12/30/2013	019	TSS Daily Maximum	70.0 mg/L	97 mg/L	-
12/30/2013	019	Iron (Fe) Daily Maximum	6.0 mg/L	6.41 mg/L	1
February 2014	009	Iron (Fe) Monthly Average	3.0 mg/L	5.93 mg/L	28
February 2014	015	Iron (Fe) Monthly Average	3.0 mg/L	3.11 mg/L	28
March 2014	015	Turbidity Daily Maximum	51.0 NTU	52.6 NTU	1
March 2014	015	Thallium Monthly Average	0.274 µg/L	0.66 µg/L	31
April 2014	009	Turbidity Daily Maximum	51.0 NTU	97 NTU	1
April 2014	009	Iron (Fe) Monthly Average	3.0 mg/L	4.95 mg/L	30
April 2014	009	Iron (Fe) 4-Day Average	3.45 mg/L	4.95 mg/L	-
April 2014	011	Turbidity Daily Maximum	51.0 NTU	77.5 NTU	1
April 2014	014	Turbidity Daily Maximum	51.0 NTU	209 NTU	1
April 2014	014	Iron (Fe) Monthly Average	3.0 mg/L	4.21 mg/L	30
April 2014	014	Iron (Fe) 4-Day Average	3.45 mg/L	4.21 mg/L	-
April 2014	015	Turbidity Daily Maximum	51.0 NTU	75.3 NTU	1
April 2014	015	Iron (Fe) Monthly	3.0 mg/L	3.64 mg/L	30

**Table I – Self-Reported NPDES Permit Violations
Fleetwood Mine (AL0071358)**

Date	Outfall	Parameter	Permit Limit	Discharge	Number of Violations
April 2014	020	Turbidity Daily Maximum	51.0 NTU	330 NTU	1
April 2014	020	TSS Monthly Average	35.0 mg/L	57 mg/L	30
April 2014	020	TSS Daily Maximum	70.0 mg/L	122 mg/L	-
April 2014	020	Iron (Fe) Daily Maximum	6.0 mg/L	6.84 mg/L	1
June 2014	009	Turbidity Daily Maximum	51.0 NTU	83.0 NTU	1
June 2014	015	Iron (Fe) Monthly Average	3.0 mg/L	3.35 mg/L	30
October 2014	019	Nickel Monthly Average	57.2 µg/L	58.7 µg/L	31
December 2014	011	Mercury Monthly Average	0.012 µg/L	0.136 µg/L	31
December 2014	015	TSS Monthly Average	35.0 mg/L	87 mg/L	31
December 2014	015	TSS Daily Maximum	70.0 mg/L	169 mg/L	-
December 2014	015	Iron (Fe) Monthly Average	3.0 mg/L	3.63 mg/L	31
December 2014	015	Iron (Fe) 4-Day Average	3.45 mg/L	3.63 mg/L	-
December 2014	015	Iron (Fe) Daily Maximum	6.0 mg/L	7.20 mg/L	-
December 2014	019	TSS Monthly Average	35.0 mg/L	51 mg/L	31
December 2014	019	TSS Daily Maximum	70.0 mg/L	140 mg/L	-
December 2014	019	Iron (Fe) Daily Maximum	6.0 mg/L	6.10 mg/L	1
December 2014	020	Turbidity Daily Maximum	51.0 NTU	57.1 NTU	1
December 2014	020	TSS Monthly Average	35.0 mg/L	51 mg/L	31
December 2014	020	Iron (Fe) Monthly Average	3.0 mg/L	3.18 mg/L	31

TOTAL

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Table II – NPDES Permit Violations Sampled by Riverkeeper

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)	Number of Violations
10/24/2014	Outfall	DSN018	Iron, Total	7.31	mg/L	6.0 mg/L	1
11/17/2014	Outfall	DSN011	Total Suspended Solids	124	mg/L	70 mg/L	1
11/17/2014	Outfall	DSN011	Turbidity	85.4	NTU	51 NTU	1
11/17/2014	Outfall	DSN014	Total Suspended Solids	172	mg/L	70 mg/L	1
11/17/2014	Outfall	DSN014	Turbidity	132	NTU	51 NTU	1
12/15/14	Outfall	DSN001	Turbidity	86	NTU	51 NTU	1
12/15/14	Outfall	DSN001	Total Suspended Solids	133	mg/L	70 mg/L	1

TOTAL 7

**Table III – Seeps (Unpermitted Discharges)
Sampled by Riverkeeper**

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)
10/24/2014	Seep	Basin 014	Total Suspended Solids	112 ¹	mg/L	N/A
10/24/2014	Seep	Basin 014	Total Dissolved Solids	1180	mg/L	N/A
10/24/2014	Seep	Basin 014	Conductivity	1267	umho/cm	N/A
10/24/2014	Seep	Basin 014	Sulfate, Total	704	mg/L	N/A
10/24/2014	Seep	Basin 014	Arsenic, Total	0.01	mg/L	N/A
10/24/2014	Seep	Basin 014	Iron, Total	0.51	mg/L	N/A
10/24/2014	Seep	Basin 014	Manganese, Total	0.64	mg/L	N/A
10/24/2014	Seep	Basin 014	Nickel, Total	0.023	mg/L	N/A
10/24/2014	Seep	Basin 015	Total Suspended Solids	28	mg/L	N/A
10/24/2014	Seep	Basin 015	Total Dissolved Solids	980	mg/L	N/A
10/24/2014	Seep	Basin 015	Conductivity	1438	umho/cm	N/A
10/24/2014	Seep	Basin 015	Arsenic, Total	0.02	mg/L	N/A
10/24/2014	Seep	Basin 015	Iron, Total	3.23	mg/L	N/A
10/24/2014	Seep	Basin 015	Manganese, Total	6.45	mg/L	N/A
10/24/2014	Seep	Basin 015	Nickel, Total	0.02	mg/L	N/A
10/24/2014	Seep A	Basin 020	Total Suspended Solids	28	mg/L	N/A
10/24/2014	Seep A	Basin 020	Total Dissolved Solids	425	mg/L	N/A
10/24/2014	Seep A	Basin 020	Conductivity	1183	umho/cm	N/A

¹ Yellow highlighted columns denote where sample value exceeds standard NPDES Permit limits.

**Table III – Seeps (Unpermitted Discharges)
Sampled by Riverkeeper**

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)
10/24/2014	Seep A	Basin 020	Sulfate, Total	122	mg/L	N/A
10/24/2014	Seep A	Basin 020	Manganese, Total	1.29	mg/L	N/A
10/24/2014	Seep B	Basin 020	Total Suspended Solids	42	mg/L	N/A
10/24/2014	Seep B	Basin 020	Total Dissolved Solids	355	mg/L	N/A
10/24/2014	Seep B	Basin 020	Conductivity	561	umho/cm	N/A
10/24/2014	Seep B	Basin 020	Sulfate, Total	124	mg/L	N/A
10/24/2014	Seep B	Basin 020	Arsenic, Total	0.24	mg/L	N/A
10/24/2014	Seep B	Basin 020	Manganese, Total	0.28	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Total Suspended Solids	12	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Total Dissolved Solids	505	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Conductivity	743	umho/cm	N/A
10/24/2014	Bypass Pipe	Basin 019	Sulfate, Total	190	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Iron, Total	5.63	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Manganese, Total	8.81	mg/L	N/A
10/24/2014	Bypass Pipe	Basin 019	Nickel, Total	0.01	mg/L	N/A
11/4/2014	Seep	Basin 009	Total Suspended Solids	6	mg/L	N/A
11/4/2014	Seep	Basin 009	Total Dissolved Solids	450	Mg/L	N/A

**Table III – Seeps (Unpermitted Discharges)
Sampled by Riverkeeper**

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)
11/4/2014	Seep	Basin 009	Sulfate, Total	259	mg/L	N/A
11/4/2014	Seep	Basin 009	Iron, Total	14	mg/L	N/A
11/4/2014	Seep	Basin 009	Manganese, Total	28	mg/L	N/A
11/4/2014	Seep	Basin 009	Nickel, Total	0.049	mg/L	N/A
11/4/2014	Seep	Basin 009	Turbidity	10.01	NTU	N/A
11/4/2014	Seep	Basin 011	Total Suspended Solids	8	mg/L	N/A
11/4/2014	Seep	Basin 011	Total Dissolved Solids	570	mg/L	N/A
11/4/2014	Seep	Basin 011	Conductivity	1042	umho/cm	N/A
11/4/2014	Seep	Basin 011	Sulfate, Total	376	mg/L	N/A
11/4/2014	Seep	Basin 011	Iron, Total	5.38	mg/L	N/A
11/4/2014	Seep	Basin 011	Manganese, Total	10	mg/L	N/A
11/4/2014	Seep	Basin 011	Nickel, Total	0.02	mg/L	N/A
11/4/2014	Seep	Basin 011	Turbidity	7.84	NTU	N/A
11/17/2014	Seep	Basin 013	Total Suspended Solids	10	mg/L	N/A
11/17/2014	Seep	Basin 013	Total Dissolved Solids	2,390	mg/L	N/A
11/17/2014	Seep	Basin 013	Sulfate, Total	1,530	mg/L	N/A
11/17/2014	Seep	Basin 013	Iron, Total	9.04	mg/L	N/A
11/17/2014	Seep	Basin 013	Manganese, Total	37	mg/L	N/A
11/17/2014	Seep	Basin 013	Nickel, Total	0.29	mg/L	N/A
11/17/2014	Seep	Basin 013	Turbidity	2.01	NTU	N/A
11/20/2014	Seep	Basin 009	Turbidity	4	NTU	N/A

**Table III – Seeps (Unpermitted Discharges)
Sampled by Riverkeeper**

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)
11/20/2014	Seep	Basin 009	Total Suspended Solids	9	mg/L	N/A
11/20/2014	Seep	Basin 009	Total Dissolved Solids	250	mg/L	N/A
11/20/2014	Seep	Basin 009	Conductivity	596	umho/cm	N/A
11/20/2014	Seep	Basin 009	Sulfate, Total	147	mg/L	N/A
11/20/2014	Seep	Basin 009	Iron, Total	10	mg/L	N/A
11/20/2014	Seep	Basin 009	Manganese, Total	14	mg/L	N/A
11/20/2014	Seep	Basin 009	Thallium, Total	0.023	mg/L	N/A
11/20/2014	Seep Sediment	Basin 009	Aluminum, Total	8,580	mg/Kg	N/A
11/20/2014	Seep Sediment	Basin 009	Iron, Total	23,200	mg/Kg	N/A
11/20/2014	Seep Sediment	Basin 009	Manganese, Total	980	mg/Kg	N/A
11/20/2014	Seep Sediment	Basin 009	Nickel, Total	12	mg/Kg	N/A
11/20/2014	Seep	Basin 010	pH	5.75	s.u.	N/A
11/20/2014	Seep	Basin 010	Turbidity	1	NTU	N/A
11/20/2014	Seep	Basin 010	Total Suspended Solids	132	mg/L	N/A
11/20/2014	Seep	Basin 010	Total Dissolved Solids	305	mg/L	N/A
11/20/2014	Seep	Basin 010	Conductivity	669	umho/cm	N/A
11/20/2014	Seep	Basin 010	Sulfate, Total	239	mg/L	N/A
11/20/2014	Seep	Basin 010	Iron, Total	0.042	mg/L	N/A
11/20/2014	Seep	Basin 010	Manganese, Total	0.04	mg/L	N/A
11/20/2014	Seep	Basin 010	Thallium Total	0.017	mg/L	N/A

**Table III – Seeps (Unpermitted Discharges)
Sampled by Riverkeeper**

Date of Collection	Sample Taken From	Sample Location	Parameter	Concentration	Units	Permit Limit (If Applicable)
11/20/2014	Seep	Basin 025	Turbidity	3	NTU	N/A
11/20/2014	Seep	Basin 025	Total Suspended Solids	16	mg/L	N/A
11/20/2014	Seep	Basin 025	Total Dissolved Solids	1335	mg/L	N/A
11/20/2014	Seep	Basin 025	Sulfate, Total	831	mg/L	N/A
11/20/2014	Seep	Basin 025	Iron, Total	5.9	mg/L	N/A
11/20/2014	Seep	Basin 025	Manganese, Total	14	mg/L	N/A
11/20/2014	Seep	Basin 025	Thallium, Total	0.033	mg/L	N/A

Table IV – Violations of NPDES Permit Conditions

Date	Outfall	Narrative Violation	Stream	Number of Violations
10/24/2014	DSN-013	Substrate stained bright orange and red; significant armoring accumulated on substrate; rainbow sheen on water's surface	Sniders Spring Branch	1
10/24/2014	DSN-014	Substrate stained orange; thick red-orange-yellow armoring on substrate; orange foam and rainbow scum sheen on water's surface	Sniders Spring Branch	1
10/24/2014	DSN-015	Substrate stained orange; armoring on substrate; orange scum on water's surface; rainbow sheen and film on water's surface; orange bacteria on substrate	Sniders Spring Branch	1
10/24/2014	DSN-018	Substrate stained orange; orange bacteria on substrate; armoring on substrate	Sniders Spring Branch	1
10/24/2014	DSN-019	Substrate stained orange; orange bacteria on substrate; armoring on substrate; rainbow sheen, film, and orange foam on water's surface	Sniders Spring Branch	1
11/4/2014	DSN-009	Orange-purple film on water's surface; rainbow sheen on water's surface; substrate stained orange; armoring present on substrate	Hurricane Creek	1
11/4/2014	DSN-011	Orange bacteria buildup on stream substrate; substrate stained bright orange; rainbow sheen and film on water's surface; armoring present on substrate	UT to Hurricane Creek	1
11/17/2014	DSN-011	Turbid water with white bubbles; white-tan-brown foam; orange staining on substrate	UT to Hurricane Creek	1
11/17/2014	DSN-013	Orange-red staining in drainage with heavy armoring	Sniders Spring Branch	1
11/20/2014	DSN-009	Substrate stained yellow-orange-red with significant armoring on substrate; purple-pink-orange-yellow film and sheen on surface of water; white-tan-brown-orange foam on surface of water	Hurricane Creek	1
11/20/2014	DSN-010	Substrate stained orange; armoring on substrate; orange bacteria built up on substrate; white foam, rainbow sheen, and film on water's surface	UT to Hurricane Creek	1

Table IV – Violations of NPDES Permit Conditions

Date	Outfall	Narrative Violation	Stream	Number of Violations
11/20/2014	DSN-025	Substrate stained orange-red; significant amount of red-purple armoring built up in receiving stream	UT to Hurricane Creek	1
12/15/2014	DSN-001	Very turbid and orange water in Ruhama Church Branch, flowing into Hurricane Creek; noticeable orange turbid plume far down Hurricane Creek, which was crystal clear in parts not contaminated by mine discharge; substrate stained orange; armoring on substrate	Ruhama Church Branch	1
12/15/2014	Between DSN-001 & DSN-002	Thick tan colored armoring built up on creek bank and in edge of creek	Hurricane Creek	1
12/15/2014	DSN-002	Rainbow sheen and film on water's surface; substrate stained orange; armoring on substrate	Hurricane Creek	1
12/15/2014	DSN-004	Rainbow sheen and film on water's surface; orange bacteria on substrate; bright orange stain and armoring on substrate	Hurricane Creek	1
12/15/2014	DSN-005	Orange bacteria on substrate; substrate stained orange; armoring on substrate	Goree Coal Bed Branch	1

TOTAL

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IN THE CIRCUIT COURT FOR
TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA ex rel.,)
 LUTHER STRANGE,)
 ATTORNEY GENERAL)
 and the ALABAMA DEPARTMENT OF)
 ENVIRONMENTAL MANAGEMENT,)
)
 Plaintiff,)
)
 v.)
)
 BLACK WARRIOR MINERALS, INC.,)
 and RANCEY D. PERRY, PRESIDENT,)
)
 Defendants.)
 _____)

CASE NO.: CV-2015-_____

COMPLAINT

The State of Alabama ex rel. Luther Strange, Attorney General, and the Alabama Department of Environmental Management file this complaint against Black Warrior Minerals, Inc. and its President, Rancey D. Perry, to enforce the provisions of the Alabama Water Pollution Control Act, and alleges as follows:

THE PARTIES

1. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18) (2006 Rplc. Vol.) to enforce the provisions of the Alabama Water Pollution Control Act (hereinafter "AWPCA"), which is found at Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.). Specifically, Ala. Code § 22-22A-5(18)(b) (2006 Rplc. Vol.) authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of said Act. In addition, Ala. Code § 22-22A-5(18)(c) (2006 Rplc. Vol.) authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a

maximum of \$25,000.00 per violation. The Attorney General is authorized by Ala. Code § 36-15-12 (2006 Rplc. Vol.) to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

2. The Alabama Department of Environmental Management ("ADEM" or the "Department") is a duly constituted agency of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.). 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 *et seq.* In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.) ("AWPCA"). Pursuant to Ala. Code § 22-22A-5(19) (2006 Rplc. Vol.), ADEM is authorized to commence a civil action in the circuit court to enjoin violations of the AWPCA or any issued NPDES permit.

3. Black Warrior Minerals, Incorporated ("BWM") is an Alabama corporation licensed to do business in Alabama and headquartered in Walker County, Alabama. BWM is a "person" within the meaning of the Alabama Water Pollution Control Act, Ala. Code § 22-22-1(a)(7) (2006 Rplc. Vol.). BWM operates Fleetwood Mine ("Facility"), a surface coal mine located off of Fleetwood Road in Cottondale, Tuscaloosa County, Alabama.

4. Rancey D. Perry is named in his official capacity as President of BWM, the corporate officer responsible for BWM's compliance with the Alabama Water Pollution Control Act within the meaning of § 22-22A-5(18)(b) of the Alabama Environmental Management Act.

JURISDICTION AND VENUE

5. The Court has jurisdiction, and venue is proper, pursuant to Ala. Code §§ 22-22A-

5(18)(a),(b) and 22-22A-5(19) (2006 Rplc. Vol.).

PREVIOUS HISTORY

6. The Department issued National Pollutant Discharge Elimination System (“NPDES”) Permit Number AL0071358 (“the NPDES Permit”) to BWM for the Facility on October 21, 2008, effective November 1, 2008. The NPDES Permit was reissued on February 27, 2014, effective March 1, 2014. The NPDES Permit establishes limits on the discharge of pollutants from the Facility into waters of the State.

7. On July 24, 2013, the Department entered into a Settlement Agreement with BWM in reference to Civil Action No. CV-2011-900978 in the Circuit Court for Tuscaloosa, Alabama. The Settlement Agreement resulted in the dismissal of the civil action filed. The terms of the Settlement Agreement included both a civil penalty and the implementation of a remediation plan to address NPDES effluent limitation and AWPCA alleged violations at the Facility and to achieve compliance with the NPDES Permit.

GENERAL ALLEGATIONS

8. Ala. Code § 22-22-9(i)(3) prohibits the discharge of any pollutant into waters of the State without prior authorization.

9. An inspection of the Facility by the Department and the Alabama Surface Mining Commission on June 22, 2015 indicates that BWM is causing or allowing discharges of pollutants associated with coal mines from unauthorized seeps at the Facility to waters of the State.

10. Discharge monitoring reports submitted by BWM indicate that BWM has caused or allowed the discharge of pollutants to an Unnamed Tributary to Hurricane Creek, a water of

the State, in violation of the AWPCA, ADEM regulations, and the terms, conditions, and limitations of the NPDES Permit. *See* Exhibit A, hereby incorporated by reference as if fully set forth herein.

11. A Facility file review indicates that BWM is in violation of Permit Condition I.D.3.b. and c. (permit effective November 1, 2008) for failing to submit Noncompliance Forms (NCFs) for daily maximum limitation violations. *See* Exhibit B, hereby incorporated by reference as if fully set forth herein.

12. A Facility file review indicates that BWM is in violation of Permit Condition I.D.3.b. and c. (permit effective March 1, 2014) for failing to submit NCFs for limitation violations. *See* Exhibit B, hereby incorporated by reference as if fully set forth herein.

COUNT ONE: INJUNCTIVE RELIEF

13. The Plaintiffs hereby repeat, replead, and incorporate by reference paragraphs 1 through 12, above.

14. BWM must take such actions as deemed necessary by ADEM to fully identify, investigate and address the unauthorized seeps described above.

15. BWM must comply with the NPDES Permit and the AWPCA. Rancey D. Perry, as a responsible corporate officer, must comply with the NPDES Permit and the AWPCA.

COUNT TWO: CIVIL PENALTIES

16. The Plaintiffs hereby repeat, replead, and incorporate by reference paragraphs 1 through 15, above.

17. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), a civil penalty is due to be assessed for the violations of the NPDES Permits and the AWPCA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Take jurisdiction over this matter.
- B. Adjudge and declare that BWM and Rancey D. Perry have caused or allowed unauthorized discharges of pollutants into waters of the State.
- C. Adjudge and declare that BWM and Rancey D. Perry have violated the AWPCA and the NPDES Permit.
- D. Order BWM and Rancey D. Perry to take such actions as deemed necessary by ADEM to address the unauthorized seeps.
- E. Order BWM and Rancey D. Perry to comply with the AWPCA and the NPDES Permit.
- F. Assess a civil penalty against BWM and Rancey D. Perry, and in favor of the Plaintiffs, pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.) for the violations of the NPDES Permit and AWPCA alleged in this Complaint.
- G. That the Court tax the costs of this matter to the Defendants.
- H. Order such other relief that the Court deems proper.

DONE this ___ day of _____, 2015.

Respectfully submitted,

LUTHER STRANGE
ATTORNEY GENERAL

s/ Robert D. Tambling
Robert D. Tambling (TAM001)
Assistant Attorney General

ADDRESS OF COUNSEL:

Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
Telephone: (334) 242-7445
Email: rtambling@ago.state.al.us

/s/ Schuyler K. Espy
Schuyler K. Espy (KEA009)
Carrie T. Blanton (TOM024)
Assistant Attorney General

ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
(334) 271-7855 (Office)
sespy@adem.state.al.us
carrie.blanton@adem.state.al.us

EXHIBIT A – Effluent Violations

Monitoring Period	Outfall	Parameter	Unit	Average, Max, Min	Limit	Reported Value	Receiving Water
December 2013	015-1	Iron, Total (As Fe)	mg/l	Daily Average	3.0	3.44	UT to Hurricane Creek
December 2013	015-1	Solids, Total Suspended	mg/l	Daily Average	35	51	UT to Hurricane Creek
December 2013	015-1	Solids, Total Suspended	mg/l	Maximum Daily	70	82	UT to Hurricane Creek
December 2013	019-1	Solids, Total Suspended	mg/l	Daily Average	35	39	UT to Hurricane Creek
December 2013	019-1	Iron, Total (As Fe)	mg/l	Maximum Daily	6.0	6.41	UT to Hurricane Creek
December 2013	019-1	Solids, Total Suspended	mg/l	Maximum Daily	70	97	UT to Hurricane Creek
February 2014	009-1	Iron, Total (As Fe)	mg/l	Daily Average	3.0	5.93	UT to Hurricane Creek
February 2014	015-1	Iron, Total (As Fe)	mg/l	Daily Average	3.0	3.11	UT to Hurricane Creek
March 2014	015-1	Turbidity	NTU	Maximum Daily	51.0	52.6	UT to Hurricane Creek
March 2014	015-1	Thallium, Total Recoverable	ug/l	Monthly Average	0.274	0.66	UT to Hurricane Creek
April 2014	009-1	Iron, Total (As Fe)	mg/l	4 Day Average	3.45	4.95	UT to Hurricane Creek
April 2014	009-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	4.95	UT to Hurricane Creek
April 2014	009-1	Turbidity	NTU	Maximum Daily	51.0	97	UT to Hurricane Creek

Monitoring Period	Outfall	Parameter	Unit	Average, Max, Min	Limit	Reported Value	Receiving Water
April 2014	011-1	Turbidity	NTU	Maximum Daily	51.0	77.5	UT to Hurricane Creek
April 2014	014-1	Iron, Total (As Fe)	mg/l	4 Day Average	3.45	4.21	UT to Hurricane Creek
April 2014	014-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	4.21	UT to Hurricane Creek
April 2014	014-1	Turbidity	NTU	Maximum Daily	51.0	209	UT to Hurricane Creek
April 2014	015-1	Iron, Total (As Fe)	mg/l	4 Day Average	3.45	3.64	UT to Hurricane Creek
April 2014	015-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	3.05	UT to Hurricane Creek
April 2014	015-1	Turbidity	NTU	Maximum Daily	51.0	75.3	UT to Hurricane Creek
April 2014	020-1	Solids, Total Suspended	mg/l	Monthly Average	35.0	57	UT to Hurricane Creek
April 2014	020-1	Solids, Total Suspended	mg/l	Maximum Daily	70.0	122	UT to Hurricane Creek
April 2014	020-1	Iron, Total (As Fe)	mg/l	Maximum Daily	6.0	6.84	UT to Hurricane Creek
April 2014	020-1	Turbidity	NTU	Maximum Daily	51.0	330	UT to Hurricane Creek
May 2014	020-1	Arsenic, Trivalent Dissolved	ug/l	Monthly Average	0.397	0.58	UT to Hurricane Creek
June 2014	009-1	Turbidity	NTU	Maximum Daily	51.0	83.0	UT to Hurricane Creek
June 2014	015-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	3.35	UT to Hurricane Creek

Monitoring Period	Outfall	Parameter	Unit	Average, Max, Min	Limit	Reported Value	Receiving Water
October 2014	019-1	Nickel Total Recoverable	ug/l	Monthly Average	57.2	58.7	UT to Hurricane Creek
December 2014	011-1	Mercury Total Recoverable	ug/l	Monthly Average	0.012	0.136	UT to Hurricane Creek
December 2014	015-1	Solids, Total Suspended	mg/l	Monthly Average	35.0	87	UT to Hurricane Creek
December 2014	015-1	Solids, Total Suspended	mg/l	Maximum Daily	70.0	169	UT to Hurricane Creek
December 2014	015-1	Iron, Total (As Fe)	mg/l	Maximum Daily	6.0	7.2	UT to Hurricane Creek
December 2014	015-1	Iron, Total (As Fe)	mg/l	4 Day Average	3.45	3.63	UT to Hurricane Creek
December 2014	015-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	3.63	UT to Hurricane Creek
December 2014	019-1	Solids, Total Suspended	mg/l	Monthly Average	35.0	51	UT to Hurricane Creek
December 2014	019-1	Solids, Total Suspended	mg/l	Maximum Daily	70.0	140	UT to Hurricane Creek
December 2014	019-1	Iron, Total (As Fe)	mg/l	Maximum Daily	6.0	6.1	UT to Hurricane Creek
December 2014	020-1	Solids, Total Suspended	mg/l	Monthly Average	35.0	51	UT to Hurricane Creek
December 2014	020-1	Iron, Total (As Fe)	mg/l	Monthly Average	3.0	3.18	UT to Hurricane Creek
December 2014	020-1	Turbidity	NTU	Maximum Daily	51.0	57.1	UT to Hurricane Creek
February 2015	014-1	Turbidity	NTU	Maximum Daily	51.0	83.3	UT to Hurricane Creek

Monitoring Period	Outfall	Parameter	Unit	Average, Max, Min	Limit	Reported Value	Receiving Water
February 2015	014-1	Nickel Total Recoverable	ug/l	Monthly Average	57.2	59	UT to Hurricane Creek
February 2015	014-1	Iron, Total (As Fe)	mg/l	Monthly Average	3	3.93	UT to Hurricane Creek
February 2015	014-1	Iron, Total (As Fe)	mg/l	4 Day Average	3.45	3.93	UT to Hurricane Creek
February 2015	015-1	Turbidity	NTU	Maximum Daily	51	57.3	UT to Hurricane Creek
February 2015	015-1	Nickel Total Recoverable	ug/l	Monthly Average	57.2	66.1	UT to Hurricane Creek

**EXHIBIT B – Failure to Submit Noncompliance Forms (NCFs)
for Effluent Violations**

Monitoring Period	Outfall	Parameter	Average, Max, Min
April 2014	014-1	Iron, Total (As Fe)	4 Day Average
April 2014	014-1	Iron, Total (As Fe)	Monthly Average
April 2014	015-1	Iron, Total (As Fe)	4 Day Average
April 2014	015-1	Iron, Total (As Fe)	Monthly Average
May 2014	020-1	Arsenic, Trivalent Dissolved	Monthly Average
June 2014	015-1	Iron, Total (As Fe)	Monthly Average
December 2014	011-1	Mercury Total Recoverable	Monthly Average
December 2014	019-1	Solids, Total Suspended	Monthly Average
December 2014	019-1	Solids, Total Suspended	Maximum Daily
December 2014	019-1	Iron, Total (As Fe)	Maximum Daily
December 2014	020-1	Solids, Total Suspended	Monthly Average
December 2014	020-1	Iron, Total (As Fe)	Monthly Average
December 2014	020-1	Turbidity	Maximum Daily
February 2015	014-1	Turbidity	Maximum Daily
February 2015	014-1	Nickel Total Recoverable	Monthly Average
February 2015	014-1	Iron, Total (As Fe)	Monthly Average
February 2015	014-1	Iron, Total (As Fe)	4 Day Average
February 2015	015-1	Turbidity	Maximum Daily
February 2015	015-1	Nickel Total Recoverable	Monthly Average



AlaFile E-Notice

63-CV-2015-900803.00

Judge: JAMES H. ROBERTS JR.

To: LUDDER DAVID ALAN
davidaludder@enviro-lawyer.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. BLACK WARRIOR MINERALS, INC. ET AL
63-CV-2015-900803.00

The following matter was FILED on 12/10/2015 10:24:59 AM

C002 ADEM

PLAINTIFF'S MOTION TO DISMISS

[Filer: ESPY SCHUYLER KEAT]

Notice Date: 12/10/2015 10:24:59 AM

MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL 35401

205-349-3870
magaria.bobo@alacourt.gov

STATE OF ALABAMA

Unified Judicial System

Revised 3/5/08

Case



ELECTRONICALLY FILED

12/10/2015 10:24 AM

63-CV-2015-900803.00

CIRCUIT COURT OF

TUSCALOOSA COUNTY, ALABAMA

MAGARIA HAMNER BOBO, CLERK

63-TUSCALOOSA

 District Court Circuit Court

CV20

STATE OF ALABAMA ET AL V. BLACK WARRIOR
MINERALS, INC. ET AL**CIVIL MOTION COVER SHEET**

Name of Filing Party: C002 - ADEM

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

Schuyler Keat Espy

P.O. BOX 301463

MONTGOMERY, AL 36130

Attorney Bar No.: KEA009

 Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00)
Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56(\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0.00 _____

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other _____
pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date:

12/10/2015 10:21:58 AM

Signature of Attorney or Party:

/s/ Schuyler Keat Espy

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. CV-2015-900803
)	
BLACK WARRIOR MINERALS, INC.,)	
et al.,)	
)	
Defendants.)	

JOINT MOTION TO DISMISS

Plaintiffs the State of Alabama and the Alabama Department of Environmental Management (“ADEM”) and Defendants Black Warrior Minerals, Inc. and Rancey D. Perry, by and through their respective undersigned counsel, jointly move to dismiss this case. As grounds for the relief requested herein, the parties state as follows:

1. This case was filed on July 28, 2015.
2. Counsel for the parties engaged in discussions in an attempt to settle the claims asserted in this matter.
3. On December 10, 2015, the parties entered into a Settlement Agreement resolving all of Plaintiffs’ claims against Defendants. A copy of the Settlement Agreement is attached.

WHEREFORE, PREMISES CONSIDERED, the parties respectfully request this Honorable Court to enter an Order dismissing this case, each party to share its own costs.

Submitted this 10th day of December, 2015.

/s/ Robert D. Tambling

Robert D. Tambling (TAM001)
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7445 (office)
rtambling@ago.state.al.us

*Attorney for Plaintiff the State
of Alabama*

/s/ Schuyler K. Espy

Schuyler K. Espy (KEA009)
Carrie T. Blanton (TOM024)
Office of General Counsel
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
P.O. Box 301463
Montgomery, AL 36130-1463
(334) 271-7955 (office)
sespy@adem.state.al.us
carrie.blanton@adem.state.al.us

*Attorneys for Plaintiff the Alabama
Department of Environmental Management*

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aisrael@balch.com

*Attorneys for Defendants Black Warrior
Minerals, Inc. and Rancey D. Perry*

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. CV-2015-900803
)	
BLACK WARRIOR MINERALS, INC.,)	
et al.,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

I. INTRODUCTION

Plaintiffs State of Alabama and the Alabama Department of Environmental Management (collectively “Plaintiffs”) and Defendants Black Warrior Minerals, Inc. and Rancey D. Perry (collectively “BWM”), hereby represent and acknowledge that they agree to enter into this Settlement Agreement to resolve alleged violations at a mining facility owned and operated by BWM, specifically the Fleetwood Mine in Tuscaloosa County. Plaintiffs filed a Complaint in this action on July 28, 2015, alleging that BWM is in violation of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.) (“AWPCA” or the “Act”).

The Complaint alleges that BWM violated the terms, conditions, and limitations of the National Pollutant Discharge Elimination System (“NPDES”) Permit number AL0071358 issued by the Alabama Department of Environmental Management (“ADEM”) authorizing the discharge of pollutants to waters of the State from the Fleetwood Mine. The Complaint also alleges that BWM has caused or allowed unauthorized discharges to waters of the State from seeps at the Fleetwood Mine in violation of the AWPCA. BWM neither admits nor denies these allegations. The Parties have agreed to the entry of this Settlement Agreement without further adjudication of

any of the factual or legal issues raised in the Complaint and in full settlement of all claims in the above-styled proceedings.

II. PARTIES

1. The Attorney General is authorized by Ala. Code § 22-22A-5(1), § 22-22-9(m), § 22-22A-5(12), and § 22-22A-5(18) (2006 Rplc. Vol.) to enforce the provisions of the AWPCA. Specifically, Ala. Code § 22-22A-5(18)b. (2006 Rplc. Vol.) authorizes the Attorney General to bring a civil action for violation of permits issued under the AWPCA and for unpermitted discharges of pollutants in violation of said Act. In addition, Ala. Code § 22-22A-5(18)c., *as amended*, authorizes the Attorney General to recover civil penalties for such permit violations and unpermitted discharges of pollutants, providing for a maximum of \$25,000.00 per violation. The Attorney General is further authorized by Ala. Code § 36-15-12 (2006 Rplc. Vol.) to institute and prosecute, in the name of the State, all civil actions and other proceedings necessary to protect the rights and interests of the State.

2. Plaintiff the Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama formed by the Alabama Environmental Management Act, Ala. Code 22-22A-1 through 22-22A-17, *as amended*. Pursuant to the AWPCA, Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), and the authority delegated to the State of Alabama by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (“Clean Water Act”), the Alabama Department of Environmental Management is primarily responsible for the promulgation and enforcement of water pollution control regulations and water quality standards within the State of Alabama.

3. Defendant Black Warrior Minerals, Inc. (the “Corporation”), is an Alabama corporation licensed to do business in Alabama and headquartered in Walker County, Alabama. Defendant Rancey D. Perry is the President of the Corporation.

III. OBJECTIVES

4. It is the express purpose of the Parties entering into this Settlement Agreement to resolve all legal and factual allegations raised by Plaintiffs regarding BWM’s compliance with its NPDES permit and the AWPCA for the Fleetwood Mine and all standards, conditions, and other terms incorporated therein. In light of these objectives, BWM agrees to, *inter alia*, cause the expeditious implementation of the measures set forth herein and approved by Plaintiffs, and do all lawful acts necessary to effectuate the provisions of this Settlement Agreement.

IV. DEFINITIONS

5. Unless otherwise defined herein, terms used in this Settlement Agreement shall have the meaning given to those terms in the AWPCA, Ala. Code §§ 22-22-1 through 22-22-16 (2006 Rplc. Vol.), the Clean Water Act, 33 U.S.C. § 1251, et seq., and the regulations promulgated thereunder.

6. The following terms used in this Settlement Agreement shall be defined as follows:
- a. “Complaint” shall mean the Complaint filed by Plaintiffs against BWM in the above-styled proceeding.
 - b. “Settlement Agreement” shall mean this Settlement Agreement.

V. COMPLIANCE ACTIONS

7. As part of this Settlement Agreement, within ninety days of the date of filing of this Settlement Agreement, BWM will prepare and submit to ADEM for its review and acceptance an Investigation Report and Compliance Plan (“Plan”) prepared by a professional engineer licensed in the State of Alabama that addresses the NPDES effluent limitation and AWPCA alleged

violations at the Fleetwood Mine. The Plan will include remedial actions necessary to comply with all standards, conditions, and other terms of the AWPCA and BWM's NPDES Permit No. AL0071358, along with a schedule for implementation of such remedial actions. The Plan will also include the results of BWM's investigation of the alleged seeps at the Fleetwood Mine and, for each seep, either: (1) remedial action(s) to be performed and a schedule for implementation of such remedial action(s), or (2) where BWM proposes no remedial action, a rationale as to why no remedial action is necessary. The Plan's schedule for implementation of remedial actions will include specific deadlines. Upon ADEM's acceptance of the Plan, BWM will implement the actions outlined in the Plan pursuant to the Plan's schedule for implementation.

8. Within thirty days of the Plan's final deadline, BWM will submit certification to ADEM, signed by a professional engineer licensed in the State of Alabama, indicating whether BWM is in compliance with all standards, conditions, and terms of the AWPCA and BWM's NPDES Permit No. AL0071358. Should ADEM determine that additional information regarding the certification is necessary, ADEM will notify BWM within sixty days of receipt of the certification. BWM will submit such additional information within thirty days of notification by ADEM. ADEM will notify BWM of its acceptance of the certification.

VI. CIVIL PENALTY

9. BWM is assessed and agrees to pay a civil penalty in the amount of \$40,000.00 to be disbursed as follows:

a. Within forty-five (45) days following the execution of this Settlement Agreement by all parties, BWM shall pay to the Attorney General's Litigation Support Fund, established pursuant to Ala. Code § 36-15-4.2, reasonable attorneys fees, costs, and related

expenses totaling \$20,000.00. BWM shall submit said payment by certified check made payable to the Attorney General's Litigation Support Fund to the following address:

ADMINISTRATIVE SERVICES DIVISION
OFFICE OF ATTORNEY GENERAL
501 WASHINGTON AVENUE
MONTGOMERY, AL 36130-0152

b. Within forty-five (45) days following the execution of this Settlement Agreement by all parties, BWM shall pay to the Alabama Department of Environmental Management a civil penalty in the amount of \$20,000.00. BWM shall submit said payment by certified check made payable to the Alabama Department of Environmental Management to the following address:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

VII. STIPULATED PENALTIES

10. BWM will pay to Plaintiffs stipulated civil penalties for each day it fails to meet any of the milestone dates or satisfy any of the requirements set forth in or established by Section V. or VI. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for Force Majeure events as hereinafter defined shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$100
31st to 60th day	\$200
After 60 days	\$300

11. Stipulated civil penalties shall automatically begin to accrue on the first day BWM fails to meet any of the schedules of performance required by Section V. or VI. of this Settlement

Agreement. Payment of stipulated civil penalties as set forth above shall not abate any other rights or remedies which may be available to Plaintiffs or their agencies by reason of BWM's failure to comply with requirements of this Settlement Agreement, and all applicable federal, State or local laws, regulations, NPDES permit(s) and all other applicable permits. Notification to BWM by Plaintiffs of the assessment of any stipulated penalty is not required.

12. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a). Under no circumstances shall the stipulated penalties exceed twenty-thousand dollars (\$20,000).

VII. FORCE MAJEURE

13. "Force Majeure" for purposes of this Settlement Agreement is defined as any event arising from causes beyond the control of BWM or any entity or person employed by BWM, including its employees, consultants, and contractors, which delays or prevents the performance of any obligation under this Settlement Agreement.

14. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Settlement Agreement, including the Investigation Report and Compliance Plan, whether or not due to a Force Majeure event, BWM shall so notify Plaintiffs in writing within fifteen (15) days after BWM knew of the delay or anticipated delay. The notice shall describe in detail the basis for BWM's contention that it experienced or anticipates that it will experience a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify Plaintiffs shall constitute a waiver of any claim of Force Majeure as to the event in question.

15. If Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, they shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event. In proceedings on any dispute regarding a delay in performance, BWM shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

16. Compliance with a requirement of this Settlement Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. BWM shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. BWM may petition for the extension of more than one compliance date in a single request.

VIII. NOT A PERMIT / COMPLIANCE WITH OTHER STATUTES / REGULATIONS

17. This Settlement Agreement is not and shall not be construed as a permit, nor a modification to any of BWM's permits for the Fleetwood Mine, nor shall it relieve BWM of its obligations to comply with its NPDES permits for the facility. Any new permit or modification to an existing permit shall be obtained in accordance with applicable state and federal laws and regulations.

18. Nothing herein shall be construed as relieving BWM of the duty to comply with the AWPCA, the applicable regulations promulgated thereunder, and any permits issued thereunder, or as relieving BWM of its duty to comply with any other applicable state or federal law.

IX. NON-WAIVER PROVISIONS

19. Nothing contained in this Settlement Agreement shall be construed to prevent or limit the rights of Plaintiffs or BWM against any third parties which are not Parties to this litigation. The Parties recognize that this Settlement Agreement resolves only matters between Plaintiffs and

BWM and that its execution does not preclude BWM from asserting any legal or factual position in any action brought against BWM by any person or entity not a Party to this Settlement Agreement.

20. Subject to the terms of this Settlement Agreement, the Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Settlement Agreement.

21. BWM's obligations under the provisions of this Settlement Agreement to perform duties scheduled to occur after the date of entry thereof shall be legally enforceable from that date.

22. It is the intent of the Parties hereto that the provisions hereof be severable, and should any provision(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

23. Plaintiffs reserve the right to elect to file a civil or criminal action for statutory penalties or injunctive relief against BWM for any violations of the AWPCA by BWM not covered by this Settlement Agreement and discovered after the date of entry of this Settlement Agreement.

24. This Settlement Agreement was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation. This is a settlement of claims which were vigorously contested, denied, and disputed. The execution by the Parties of this Settlement Agreement is not an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement. Accordingly, with the exception of this proceeding, this Settlement Agreement shall not be admissible in any judicial or administrative proceeding to establish the liability against a Party to this Settlement Agreement over the objection of that Party.

X. MODIFICATION

25. This Settlement Agreement represents the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of this Settlement Agreement shall not be used in any action involving the interpretation or enforcement of this Settlement Agreement. This Settlement Agreement may not be amended or modified except by written order of this Court. Any proposed modification of this Settlement Agreement by the Parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial actions to be conducted by BWM may be made by the Parties without the approval of the Court, provided such changes are agreed upon in writing.

XI. DISMISSAL OF ACTION

26. The Parties agree that they shall file a stipulation with the Court dismissing all claims in this lawsuit upon execution of this Settlement Agreement.

XII. FORM OF NOTICE

27. Unless otherwise specified or agreed to in writing by all Parties, all reports, notices, or any other written communications required to be submitted under this Settlement Agreement shall be sent to the respective Parties at the following addresses:

Alabama Department of Environmental Management
 Glenda Dean, Chief of Water Division
 1400 Coliseum Blvd.
 Post Office Box 301463
 Montgomery, Alabama 36130-1463

Office of Attorney General, State of Alabama
 Robert D. Tambling, Assistant Attorney General
 501 Washington Avenue
 Montgomery, Alabama 36130-0152

Rance D. Perry, President

Black Warrior Minerals, Inc.
P.O. Box 1190
Sumiton, Alabama 35148

P. Stephen Gidiere, III
Balch & Bingham LLP
1901 Sixth Avenue North, Ste. 1500
Birmingham, Alabama 35203

28. Notifications to, or communications with, Plaintiffs shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested. Notifications to or communications with BWM shall be deemed received ten (10) days after the date they are postmarked. However, the Parties may agree to communicate through electronic mail in lieu of by written documents.

XIII. TERMINATION

29. The obligations of this Settlement Agreement shall terminate upon final payment of the amount specified in Section VI. and acceptance by ADEM of the certification specified in Paragraph 8. of Section V.

30. BWM may petition Plaintiffs for termination of the obligations of any paragraph of this Settlement Agreement, provided that BWM has satisfied all terms and conditions of that paragraph, and certified to Plaintiffs that it has satisfied each and every term and condition of that paragraph.

XIV. SIGNATORIES

Plaintiffs and BWM hereby certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such Parties to this document. WE HEREBY CONSENT to the entry of this Settlement Agreement in State of Alabama, et al. v. Black Warrior Minerals, Inc., et al., Case No. CV-2015-900803.

APPROVED, this 10th day of December, 2015.

FOR PLAINTIFF, THE STATE OF ALABAMA:

December 10, 2015
Date

/s/ Robert D. Tambling
ROBERT D. TAMBLING (TAM001)
ASSISTANT ATTORNEY GENERAL

ADDRESS OF COUNSEL:
Office of Attorney General
State of Alabama
501 Washington Avenue
Montgomery, Alabama 36130

**FOR PLAINTIFF, THE ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT:**

December 10, 2015
Date

/s/ Schuyler K. Espy
SCHUYLER K. ESPY (KEA009)
ASSOCIATE GENERAL COUNSEL

ADDRESS OF COUNSEL:
Schuyler K. Espy
Carrie T. Blanton
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130

FOR DEFENDANTS, BLACK WARRIOR MINERALS, INC. and RANCEY D. PERRY:

December 10, 2015
Date

/s/ P. Stephen Gidiere III
P. STEPHEN GIDIERE III
COUNSEL FOR DEFENDANTS

ADDRESS OF COUNSEL:
P. Stephen Gidiere III
Thomas L. Casey, III
Adam Israel
Balch & Bingham LLP
1901 Sixth Avenue North, Ste. 1500
Birmingham, Alabama 35203



AlaFile E-Notice

63-CV-2015-900803.00

Judge: JAMES H. ROBERTS JR.

To: LUDDER DAVID ALAN
davidaludder@enviro-lawyer.com

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. BLACK WARRIOR MINERALS, INC. ET AL
63-CV-2015-900803.00

A court action was entered in the above case on 12/29/2015 10:23:25 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: JHR
Notice Date: 12/29/2015 10:23:25 AM

MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL 35401

205-349-3870
magaria.bobo@alacourt.gov



ELECTRONICALLY FILED
12/29/2015 10:23 AM
63-CV-2015-900803.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA,)	
ADEM,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2015-900803.00
)	
BLACK WARRIOR MINERALS, INC.,)	
PERRY RANCEY D,)	
Defendants.)	

ORDER OF DISMISSAL

Plaintiffs and Defendants, by and through their attorneys of record having filed a Joint Stipulation of Dismissal with prejudice, and the Court having considered the same and finding that the same is well taken, it is hereby ORDERED, ADJUDGED, and DECREED that all claims in the above-styled cause are hereby dismissed with prejudice, each party to bear its own costs.

DONE this 29th day of December, 2015.

/s/ JAMES H. ROBERTS JR.
CIRCUIT JUDGE