

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MCKENZIE METHANE, INC.
NPDES PERMIT NUMBER AL0057797

ORDER NO. 90-066-WP

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, ALA. CODE §§ 22-22A-1 through 22-22A-16 (1975 and 1989 Cum. Supp.), the Alabama Water Pollution Control Act, ALA. CODE §§ 22-22-1 through 22-22-14 (1975 and 1989 Cum. Supp.), and the National Pollutant Discharge Elimination System (NPDES) administered by the Alabama Department of Environmental Management (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. McKenzie Methane Company, Inc. (the Permittee) operates a coal bed methane extraction facility in Shelby County, Alabama.

2. On December 1, 1989, the Permittee was issued NPDES Permit Number AL0057797, which authorized the discharge of certain pollutants and other wastes into the Cahaba River, a water of the state, subject to certain terms, conditions, and limitations.

3. On Saturday, December 2, 1989, a fluids containment pit wall on the Permittee's coal bed methane drilling operations

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pad USX-2-151 was intentionally breached and pollutants contained in that pit were discharged into waters of the state as shown by the following laboratory analysis of samples of the receiving waters and of the discharge:

	Upstream of discharge	Downstream from Discharge	Effluent from Pit
Turbidity	15 N.T.U.	1200 N.T.U.	9000 N.T.U.
Total Suspended Solids (TSS)	6 mg/l	1006 mg/l	1329 mg/l
Total Dissolved Solids (TDS)	48 mg/l	110 mg/l	185 mg/l
Iron (Fe)	1.21 mg/l	61.0 mg/l	580 mg/l
Manganese (Mn)	0.14 mg/l	.44 mg/l	5.96 mg/l
pH	6.3 s.u.	6.2 s.u.	7.3 s.u.

4. The Department was warned on Friday night, December 1, 1989 that the breach was scheduled for the following morning. The discharge was, therefore, premeditated, with knowledge of the illegality thereof, and with base indifference to the effects thereto.

5. The Permittee did not have a permit for this discharge.

6. This discharge violated the terms and conditions of NPDES Permit Number AL0057797.

7. The Permittee was subject to previous enforcement action, to wit, Administrative Order Number 89-115-WP in which the Permittee was fined Five Thousand Dollars (\$5,000.00) for the negligent discharge of pollutants from a fluid containment pit. That Order was issued August 29, 1989.

8. On December 3, 1989, following the discharge of December 2, 1989, the Department issued Administrative Order Number 90-035-WP which suspended the Permittee's discharge privileges under NPDES Permit Number AL0057797. On December 18, 1989, the Permittee filed an appeal of that Order with the Environmental Management Commission.

9. The Permittee is ultimately responsible for the discharge of December 2, 1989, but whether the decision to breach the pit wall originated with the Permittee or with a subcontractor, or employee of a subcontractor, is unclear.

10. The Department is conducting an investigation of the incident of December 2, 1989 in order to determine the identity of the person or persons referenced in Paragraph 9. Until the resolution of that investigation, the Department cannot rest assured that the strictures of NPDES Permit Number AL0057797 are adequate to protect waters of the State.

11. The Permittee has the ability to pay the civil penalty assessed herein.

ORDER

Based upon the foregoing FINDINGS OF FACT and pursuant to ALA. CODE §§ 22-22A-5 and 22-22-9, and §307 of the Federal Water Pollution Control Act, 33 U.S.C. §1342, it is hereby ORDERED:

A. That the Permittee pay to the Department a civil penalty in the amount of Twenty Five Thousand Dollars

(\$25,000.00) for the discharge of December 2, 1989, to be paid within 30 days of the date of receipt of this Order.

B. That the suspension of the Permittee's authorization to discharge into waters of the State pursuant to the provisions of NPDES Permit Number AL0057797, ordered by Administrative Order Number 90-035-WP, remains and continues pending the results of the Department's investigation, or the resolution of the appeal of that Order.

C. That Administrative Order Number 90-035-WP and its predicate findings of fact are revoked or modified to the extent they may be inconsistent with this Order and predicate factual findings.

D. That the Permittee cease all unpermitted discharges into waters of the State.

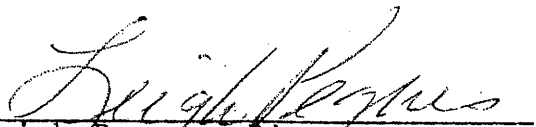
E. That the Permittee immediately and hereafter comply with the terms, conditions and limitations of any and all NPDES permits as may be presently or hereafter held by or issued to the Permittee by the Department.

F. That the failure to comply with any provisions of this Order shall constitute cause for the revocation of NPDES Permit Number AL0057797, and/or any other NPDES permits held by the Permittee, for the commencement of legal action for the recovery of civil penalties, criminal fines, or other appropriate action.

G. That the issuance of this Order does not preclude the Department from taking enforcement action for the violation

referenced herein, or for other violations which might have occurred prior to the date of issuance of this Order, or which may occur subsequent to the issuance of this Order.

ORDERED and ISSUED this 12th day of February, 1990.



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

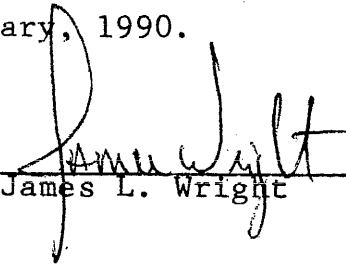
CERTIFICATE OF SERVICE

I, James L. Wright, hereby certify that I have served Administrative Order 90-066-WP upon McKenzie Methane, Inc. by sending the same postage paid, through the U.S. Mail, as Certified Mail No. P 070 963 713 and P 070 963 714 respectively, with instructions to forward and return receipt requested to:

Mike McKenzie
McKenzie Methane Corporation
5847 San Felipe Road, Suite 4300
Houston, Texas 77057

Tom Watson, Esq.
Watson & Harrison
1651 McFarland Boulevard, North
Tuscaloosa, AL 35406

Done this 12th day of February, 1990.


James L. Wright