

**LANCE R. LEFLEUR**  
DIRECTOR



**KAY IVEY**  
GOVERNOR

Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

**CERTIFIED MAIL 9489 0090 0027 6203 9856 21**  
**RETURN RECEIPT REQUESTED**

April 7, 2021

Philip Saunders  
Vice President – Engineering  
Warrior Met Coal Mining, LLC  
16243 Highway 216  
Brookwood, AL 35444

**RE: Final Consent Order No. 21-044-CWP**  
NPDES Permit No. AL0026590  
Mine No. 4  
Tuscaloosa County (125)

Dear Mr. Saunders:

Please find enclosed ADEM Consent Order No. 21-044-CWP which requires you to take certain actions at the coal mining and processing operation listed above in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of Warrior Met Coal Mining, LLC and the Department.

Comments were received during the public comment period. The comments and the Department's responses are available for review in the Department's eFile System.

Please note that the civil penalty in the amount of \$27,750.00 is due not later than 45 days after the effective date of this order.

If you have questions regarding this matter, please contact Jasmine White by email at [jasmine.white@adem.alabama.gov](mailto:jasmine.white@adem.alabama.gov) or by phone at (334) 270-5622.

Sincerely,

A handwritten signature in black ink, reading "Jeffery W. Kitchens".

Jeffery W. Kitchens, Chief  
Water Division

JWK/cam

File: ECO/6798

Enclosure

Cc: S. Shawn Sibley, Office of General Counsel  
Carrie Blanton, Office of General Counsel  
James H. Carlson, Water Division  
Catherine A. McNeill, Water Division  
Jasmine White, Water Division

Executed: 04-07-2021

Mailed: 04-07-2021

**Birmingham Branch**  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

**Decatur Branch**  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



**Mobile Branch**  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

**Mobile-Coastal**  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Warrior Met Coal Mining, LLC )

Mine No 4 )

Brookwood, Tuscaloosa County, Alabama )

NPDES Permit No. AL0026590 )

Consent Order No. 21-044-CWP

***PREAMBLE***

This Special Order by Consent ("Consent Order") is made and entered into by the Alabama Department of Environmental Management ("the Department") and Warrior Met Coal Mining, LLC ("the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act ("AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates an underground coal mining and processing facility known as Mine No. 4 ("the Mine") located on 14730 Lock 17 Road, Brookwood, Tuscaloosa County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department issued National Pollutant Discharge Elimination System ("NPDES") Permit Number AL0026590 ("the Permit") to the Permittee on August 1, 2019, effective August 1, 2019, establishing limitations on the discharge of pollutants from such point sources, designated herein as Outfall Numbers 001 through 058, from the Mine to the Black Warrior River, Black

Branch, Beaver Pond Creek, Cane Creek, Davis Creek, Oswalt Creek, an unnamed tributary to Blue Creek, an unnamed tributary to Cane Creek, an unnamed tributary to Hurricane Creek, an unnamed tributary to Oswalt Creek, unnamed tributaries to Black Warrior River, unnamed tributaries to Black Branch, unnamed tributaries to Bluff Creek, unnamed tributaries to Daniel Creek, unnamed tributaries to Davis Creek, and unnamed tributaries to Horn Creek, all Waters of the State.

#### ***DEPARTMENT'S CONTENTIONS***

5. Part II.A.2.e. of the Permit states the Permittee shall prepare, implement, and maintain a Spill Prevention, Control, and Countermeasures ("SPCC") Plan acceptable to the Department that is prepared and certified by a Professional Engineer ("PE"), registered in the state of Alabama, for all onsite petroleum product or other pollutant storage tanks or containers as provided by ADEM Admin. Code r. 335-6-6-.08(j)5. The Plan shall describe and the Permittee shall implement appropriate structural and/or non-structural spill prevention, control, and/or management pursuant to ADEM Admin Code r. 335-6-6-.12(r) sufficient to prevent any spills of pollutants from entering a ground or surface water of the State or a publicly or privately owned treatment works.

6. The SPCC Plan submitted to the Department by the Permittee which is acceptable to the Department provides that valves for releasing precipitation in containment dikes are closed immediately after the discharge of accumulated rainwater. The SPCC Plan also provides that "[a]ny visible oil leaks are promptly repaired."

7. On March 27, 2019, the Department completed a routine inspection at the Mine. During the inspection, the Department noted leaks from refill pipes on two oil tanks with open buckets placed under the leaks.

8. On November 21, 2019, the Department completed a routine inspection at the Mine. During the inspection, the Department again noted leaks from refill pipes on two tanks with open buckets placed under the leaks containing oily water. In addition, the drain pipe from a used oil tank's secondary containment was open. The Permittee's failure to promptly repair visible leaks and allowing for open precipitation drainage pipes are violations of Part II.A.2.e. of the Permit which

requires the Permittee to implement and maintain the SPCC Plan acceptable to the Department.

9. ADEM Admin. Code r. 335-6-9-.06(1) requires the Permittee to conduct operations in such a manner as to not place or cause to be placed into a stream: soil, rock, trees, overburden or any other debris or material associated with mining operations.

10. Part II.A.2.f. of the Permit requires that all surface drainage and storm water runoff which originate within or enters the Mine's premises and which contain any pollutants or other wastes shall be discharged, if at all, from a point source identified on Page 1 of the Permit and described more fully in the application.

11. On August 11, 2020, the Department was notified of a slurry spill that occurred at the Mine that initially settled in approximately 0.5 linear miles of an unnamed tributary to an unnamed tributary to Daniel Creek. The spill, which resulted in material associated with mining operations being placed into a stream, is in violation of ADEM Admin. Code r. 335-6-9-.06(1). The spill, which resulted in a discharge of pollutants from a point source not identified on Page 1 of the Permit or described in the application, is also in violation of Part II.A.3.f. of the Permit.

12. On August 14, 2020, the Department received the Remediation Plan ("Plan") prepared in response to an Alabama Surface Mining Commission ("ASMC") Notice of Violation ("NOV") for the slurry spill. The Plan provides the results of an investigation to identify the cause of the slurry spill, the results of stream monitoring, and the steps taken to remediate the effects of the spill. The Department received weekly progress reports of the remediation actions along with sampling data and photographs.

13. On August 24, 2020, the Department issued an NOV to the Permittee for the aforementioned violations of ADEM Admin. Code r. 335-6-9-.06(1) and Part II.A.2.f. of the Permit associated with the slurry spill. The NOV required the Permittee to provide an additional report to supplement the Plan detailing the estimated volume of discharged slurry and steps that have been taken or are proposed to be taken to prevent future violations. The NOV also required the Permittee to include in the report submitted to the Department all available information regarding capital investments, one-time non-depreciable expenditures, and avoided annual recurring costs resulting from delayed compliance. The written engineering report was required to be submitted so that it

was received by the Department within thirty (30) days from the date of receipt of the NOV. The NOV was recorded by the United States Postal Service Certified Mail Tracking as being received by the Permittee on September 1, 2020, and the required response from the Permittee was due to be received by the Department no later than September 30, 2020.

14. The Department received the supplemental report on September 23, 2020. The supplemental report indicates that an estimated seventeen tons of fine coal refuse was discharged during the slurry spill event. The supplemental report also indicated that the Permittee did not receive financial gain as a result of noncompliance.

15. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department shall give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit that delayed compliance may have conferred upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided, however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Violations of ADEM Admin. Code div. 335-6, the Permit, and the AWPCA were noted. In arriving at the civil penalty, the Department considered the general nature of each violation, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** The Department noted that certain violations were easily avoidable. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:

The Department has determined that delayed compliance for the SPCC Plan violations conferred an economic benefit upon the Permittee, and the Department, as a result, has enhanced the penalty.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is aware of efforts by the Permittee to minimize or mitigate the effects of the violations associated with the slurry spill upon the environment. The Department is unaware of efforts by the Permittee to minimize or mitigate the effects of the SPCC Plan violation.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of a history of previous violations of a similar nature.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment A.

16. The Department neither admits nor denies the Permittee's contentions, which are set forth in Paragraphs 17 through XX below. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

***PERMITTEE'S CONTENTIONS***

17. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order.

## **ORDER**

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. Not later than **forty-five (45) days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$27,750 in settlement of the violations alleged herein. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. The Permittee shall continue to submit a copy of any reports required by the ASMC to the Department associated with the Permittee's progress towards achieving compliance with Remediation Plan previously submitted.

D. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. This certification shall be submitted to the Department within thirty days of the submittal of the final report to the ASMC.

E. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order

certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

F. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.



I. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Mine which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if such future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

J. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

K. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

L. Final approval and issuance of this Consent Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public has at least thirty days within which to comment on the proposed Consent Order.

M. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

O. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

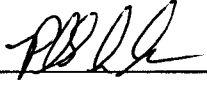
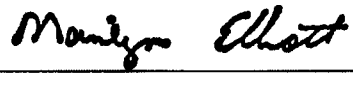
Executed in duplicate, with each part being an original.

WARRIOR MET COAL MINING, LLC

ALABAMA DEPARTMENT OF

ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By:  Philip K. Saunders By: 

Its: VP - Engineering Its: Deputy Director

Date: 1/11/2021 Date: 4/7/21

**Attachment A  
Penalty Calculation**

**Warrior Met Coal Mining, LLC – Mine No. 4  
Brookwood, Tuscaloosa County  
AL0026590**

Violation*	Number of Violations*	(A)	(B)	(C)										
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*										
Failure to Implement and Maintain SPCC Plan	2	\$7,500	\$2,500	\$0										
Causing Material to be Placed in a Stream	1	\$7,500	\$2,500	\$0										
Discharge of Pollutants from a Point Source Not Identified in the Permit	1	\$5,000	\$2,500	\$0										
		\$20,000	\$7,500	\$0										
		Total (A)	Total (B)	Total (C)										
<div>Additional Adjustments due to negotiations, receipt of additional information, or public comment</div> <table><tr><td>Mitigating Factors (-)</td><td>\$0</td></tr><tr><td>Economic Benefit (+)</td><td>\$0</td></tr><tr><td>Ability to Pay (-)</td><td>\$0</td></tr><tr><td>Other Factors (+/-)</td><td>\$0</td></tr><tr><td>Total Adjustments (+/-)</td><td>\$0</td></tr></table>		Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0	Ability to Pay (-)	\$0	Other Factors (+/-)	\$0	Total Adjustments (+/-)	\$0	Base Penalty Total [Total(A) + Total(B) + Total(C)]\$27,500		
		Mitigating Factors (-)	\$0											
		Economic Benefit (+)	\$0											
		Ability to Pay (-)	\$0											
		Other Factors (+/-)	\$0											
		Total Adjustments (+/-)	\$0											
		Mitigating Factors (-)\$0												
Economic Benefit (+)\$250														
Ability to Pay (-)\$0														
Other Factors (+/-)\$0														
INITIAL PENALTY\$27,750														
		Total Adjustments (+/-)\$0												
		FINAL PENALTY\$27,750												

Additional Adjustments due to negotiations, receipt of additional information, or public comment	
Mitigating Factors (-)	\$0
Economic Benefit (+)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
<b>Total Adjustments (+/-)</b>	<b>\$0</b>

**Footnote**

**\*See the "Department's Contentions" of the order for a detailed description of each violation and the penalty factors.**

Black Warrior **RIVERKEEPER**®  
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[www.BlackWarriorRiver.org](http://www.BlackWarriorRiver.org)



March 4, 2021

Jeffery W. Kitchens, Chief  
Water Division  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

Re: Proposed ADEM Order of Consent with Warrior Met Coal Mining, LLC, Mine No. 4

*Via Electronic Mail Only*

Dear Mr. Kitchens:

Thank you for the opportunity to provide comments on the proposed consent order ("Order") issued to Warrior Met Coal Mining, LLC (Warrior Met Coal) for their operation of Mine No. 4. The Order addresses Alabama Water Pollution Control Act and NPDES permit violations for the discharge of pollutants from a point source not identified in NPDES Permit No. AL0026590; failure to conduct mine operations in such a manner as to not place in a stream or cause to be placed in a stream material associated with mining operations; and failure to properly implement and maintain a Spill Prevention, Control, and Countermeasures (SPCC) Plan. The Department is proposing a civil penalty in the amount of \$27,750.00. The Order, if executed, would require Warrior Met Coal to pay the proposed civil penalty; to submit reports associated with its progress towards achieving compliance with an existing Remediation Plan; and to submit certification by a Professional Engineer licensed to practice in Alabama indicating compliance with all requirements of the Order.

We write on behalf of Black Warrior Riverkeeper, ("Riverkeeper"), a nonprofit organization dedicated to protecting and restoring the Black Warrior River and its tributaries. Discharges from Mine No. 4 flow to the Black Warrior River, Black Branch, Beaver Pond Creek, Cane Creek, Davis Creek, Oswalt Creek, an unnamed tributary to Blue Creek, an unnamed tributary to Cane Creek, an unnamed tributary to Hurricane Creek, an unnamed tributary to Oswalt Creek, unnamed tributaries to the Black Warrior River, unnamed tributaries to Black Branch, unnamed tributaries to Bluff Creek, unnamed tributaries to Daniel Creek, unnamed tributaries to Davis Creek, and unnamed tributaries to Horn Creek, all waters of the State located in the Black Warrior River watershed.

## **Background**

On August 11, 2020, Warrior Met Coal experienced a coal slurry spill from a broken seam in a slurry pipeline at Mine No. 4. Roughly 17 tons of slurry was deposited in approximately 0.5 linear miles of an unnamed tributary to an unnamed tributary of Daniel Creek. There was black sediment in the tributary and an ADEM inspection noted foam and coal fines floating in the water. Two rock check dams were constructed to contain the slurry, which was then manually removed from the waterbody. The Order addresses the slurry spill, as well as visible oil leaks from refill pipes on two oil tanks which occurred March 27 and November 21, 2019.

## **Application of Required Penalty Factors**

ADEM is required by law to apply specific penalty factors in evaluating the violations by Warrior Met Coal. “In determining the amount of any penalty, consideration shall be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty.” Ala. Code §22-22A-5(18)(c).

As we have commented before, merely reciting the penalty factors, without applying them to the facts at hand, fails to show how the penalties were calculated. As stated in previous comment letters, when the Department fails to substantively address and apply all of these factors in their penalty orders, they create a lack of transparency for the public as well as a lack of consistency and certainty for the regulated community.

The Order fails to substantively apply the penalty factors in several key respects. First, in evaluating the seriousness of the violations, ADEM merely states that violations were noted and that the Department considered their general nature. However, ADEM fails to discuss whether and to what extent the violations were serious breaches of applicable law or the terms and conditions of the mine's NPDES permit. There is no discussion of water quality or habitat impacts, which had to be considerable given the size of the slurry spill relative to the small size of the unnamed tributary. Daniel Creek downstream is already designated as impaired for siltation and total suspended solids from past mining, so despite any containment the spill degraded water quality downstream in an already impaired stream. Yet the order fails to address any of these factors or apply any enhancements.

Second, ADEM does not state what the standard of care is, although the Department states that “certain” unidentified violations were “easily avoidable” so the penalty was enhanced \$2,500. ADEM's approach fails to identify where and how Warrior Met Coal failed to meet the standard of care or tie the

enhancement to those failures. This approach does not provide a meaningful explanation of the expected minimum standard of care for the public or others.

Third, ADEM determined that delayed compliance with the mine's SPCC Plan conferred an economic benefit of \$250 upon Warrior Met Coal. However, the Order fails to explain what the economic benefit was or how the Department calculated that benefit. Similarly, the Order does not discuss whether avoidance of maintenance or other investments leading up to or not the slurry spill could have conferred an economic benefit. "The goal of economic benefit analysis is to prevent a violator from profiting from its wrongdoing." *Piney Run Pres. Ass'n v. County Comm'rs of Carroll County Maryland*, 82 F. Supp. 2d 464, 471 (D. Md. 2000). Given this important goal, it is essential that ADEM address this penalty factor every time, in detail. Here, the Department falls short.

ADEM states that the Department is unaware of a history of previous violations. Mine No. 4's permit file appears to support that conclusion. However, it is disappointing to see violation of the SPCC Plan on March 27 and then again on November 21, 2019, with no penalty enhancement for Warrior Met Coal's failure to address the violation the first time.

As long as ADEM fails to properly penalize polluters for violating permits and regulations, those violations will persist. Such a short-sighted approach allows polluters to extract inflated profits from Alabama, while unloading pollution on our people, water resources and wildlife. This approach is a disservice to public health and the state. The lack of transparency in penalty calculations makes it difficult for the public (and other permittees) to understand how the Department considers and applies the penalty factors.

### ***Conclusion***

A negotiated order must properly penalize violations. Without a robust enforcement approach or a transparent penalty calculation, ADEM misses an opportunity to educate Warrior Met Coal and others about the costs of noncompliance. A coal slurry spill of 17 tons into an already impaired stream only cost Warrior met Coal \$17,750 which is a slap on the wrist. Unless penalties cost more (either directly or through additional constraints on a facility's operation) than can be saved through noncompliance, the incentive is for permittees not to address problems proactively. A polluter can be certain that implementation of proper pollution controls will be much more costly than doing the bare minimum. Enforcement actions taken by ADEM should serve to hold the offending party responsible and accountable for their actions. Unless ADEM is willing to impose penalties commensurate with the seriousness of the violations, nothing will change and our environment will be the poorer for it.

Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions or if you require any additional information. We look forward to receiving the Department's response to our comments.


For the River,

A handwritten signature in cursive script, appearing to read "Nelson Brooke".

Nelson Brooke  
Riverkeeper

A handwritten signature in cursive script, appearing to read "John Kinney".

John Kinney  
Enforcement Coordinator

A handwritten signature in cursive script, appearing to read "Eva L. Dillard".

Eva Dillard  
Staff Attorney