

EXHIBIT 1

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "**Agreement**") is entered into the 10th day of April, 2018 ("**Effective Date**"), by and between Purdy Run Aggregates, LLC, a Florida limited liability company, having a mailing address of 33717 Woodward Avenue, #600, Birmingham, Michigan 48009 ("**Purdy Run**"), and Tall Grass Management Partners, LLC, a Florida limited liability company, having a mailing address of 2881 Jefferson Street, Marianna, Florida 32446 ("**Tall Grass**").

WHEREAS, Purdy Run is in the business of, purchasing real estate for the purpose of (i) extracting aggregate, minerals and/or other materials from such real estate (collectively, the "**Aggregate**"), including, without limitation, that certain parcel of land, containing 94.11 acres, more or less, situated in Clay District, Harrison County, West Virginia (the "**Southern Property**") and (ii) selling the extracted Aggregate (the "**Business**") throughout West Virginia (the "**Business Territory**"); and

WHEREAS, Tall Grass has expertise in managing the operations of the Business; and

WHEREAS, Purdy Run desires to have Tall Grass perform such management services and Tall Grass has agreed to do so upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties, intending to be legally bound, agree as follows:

Article I – Services and Term

1. **Management Services: Scope of and Changes in Work.** Subject to the supervision and control of the Manager of Purdy Run, Tall Grass shall manage the day to day operations of Purdy Run (the "**Services**"), including, without limitation, the following:

- (i) administering and supervising all of the finances of Purdy Run, including payroll, taxes, accounting, bookkeeping, record keeping, managing or accounts payable, and accounts receivable, banking, financial records and reporting functions as they pertain to the business of Purdy Run and to incorporate such functions into systems used by the Manager of Purdy Run;
- (ii) preparing and maintaining financial statements for Purdy Run according to generally accepted accounting principles consistently applied and shall provide the Manager with monthly operating reports and statements, including, without limitation, cash flow statements, income statements, accounts payable and accounts receivable reports and such other reports and information as may be requested by the Manager of Purdy Run, from time to time;

- (iii) selecting all personnel including third-party contractors and service providers necessary to conduct the business of Purdy Run;
- (iv) negotiating contracts with contractors, architects, engineers and such other entities as may be required to manage the Business;
- (v) coordinating all negotiations with any and all appropriate municipalities and other governmental authorities including, handling the acquisition of (or assisting with the acquisition of) any and all permits and other governmental authorizations necessary or desirable for the operation of the Business;
- (vi) supervising and controlling the purchase of all materials and supplies, and the acquisition, lease, disposal of and repair of equipment and facilities necessary to provide safe and adequate service to the Business;
- (vii) handling all sales and marketing activity, including, without limitation, managing all costs and all pricing on a customer-by-customer basis, estimating all costs on new contracts, bidding on and negotiating new contracts, and controlling all costs for contracts in progress;
- (viii) with regard to customer sales transaction, evaluate and monitor credit quality and credit-worthiness of each customer and take such steps as prudent to ensure the terms of sale protect the Business from delinquency and/or non-payment;
- (ix) maintaining the assets of Purdy Run in good repair, order and condition, normal and reasonable wear and tear excepted;
- (x) expense procuring and maintaining insurance policies on the real and personal property assets of Purdy Run, which policies shall name Purdy Run as the insured;
- (xi) paying all real and personal property taxes, assessments and other charges on a timely basis;
- (xii) paying for any other operating expenses, including, without limitation, survey costs and engineering charges; and
- (xiii) performing such other duties as may reasonably be assigned by the Manager of Purdy Run.

Notwithstanding anything herein to the contrary, Tall Grass shall not and does not have any authority to: (i) modify, renew, extend or otherwise enter into any agreement or contract on behalf of Purdy Run; (ii) incur any indebtedness on behalf of Purdy Run; (iii) institute any legal or equitable action or proceeding, for any purpose, on behalf of Purdy Run; (iv) sell, lease, encumber or otherwise dispose of any of the assets of Purdy Run; (v) hire or terminate the employment of any employee of Purdy Run; (vi) purchase any assets in the name of Purdy Run; and/or (vii) take any other action that would be binding upon Purdy Run. Tall Grass acknowledges that only the Manager of Purdy Run has the authority to take such actions.

2. **Term.** The term of this Agreement shall commence on the Effective Date of this Agreement and shall continue for a period of five (5) years from the Effective Date, unless terminated sooner pursuant to Article VI or any other provisions of this Agreement.

Article II – Compensation

Subject to the terms and conditions (and reductions) set forth in this Agreement, the compensation to be paid to Tall Grass for the performance of the Services shall be an annual management fee of \$325,000 (“**Management Fee**”). Notwithstanding the foregoing, for the 2018 calendar year, Tall Grass shall be paid fifty percent (50%) of the Management Fees until the first to occur of (i) the three month following anniversary date of the Effective Date or (ii) the Commercial Operation Date. Following the Commercial Operation Date (defined below), the Management Fee shall thereafter be payable in advance in equal monthly installments due on the first (1st) Business Day of each month. In 2019 and in each calendar year thereafter, the Management Fee shall be increased by two percent (2%) commencing on the first day of such calendar year, all in accordance with Exhibit A attached to this Agreement. Notwithstanding anything to the contrary herein, (i) in 2018, which the parties anticipate shall be the year in which the “**Commercial Operation Date**” (as defined below) occurs, Tall Grass shall meet the EBITDA Target for 2018 set forth on Exhibit A (collectively the “**EBITDA Target(s)**”) by the end of the 2018 calendar year; (ii) in 2019 and each year thereafter, Tall Grass shall meet the EBITDA Targets, on a semi-annual basis, commencing with the first two quarters of the 2019; and (iii), if Tall Grass fails to meet the EBITDA Targets as outlined on Exhibit A for the full fiscal period in 2018 or in any particular semi-annual period, commencing with the first two quarters of 2019, the amount of the Management Fee shall be reduced as set forth on Exhibit A hereto (i) in the first quarter of 2019 for the failure to meet the EBITDA in 2018, and (ii) for 2019 and years thereafter, in the 3rd quarter and 1st quarter following the particular semi-annual period in which the EBITDA Target was not met. This analysis and measurement of actual operating results shall be undertaken at the end of 2018 for that year and semi-annually commencing with the first two quarters of 2019 during the duration of this Agreement.

The parties agree that the Management Fee shall be Tall Grass’ only form of compensation and that Tall Grass shall not have any right to be reimbursed for any expenses incurred that are not itemized and set forth on **Schedule 1**. Tall Grass understands and agrees that that “**Other Expenses**”, as more fully defined below, shall be paid directly by Tall Grass from the Management Fee. Purdy Run reserves the right to set-off any expenses it incurs due to Tall Grass’ failure to timely pay any Other Expenses.

“**Commercial Operation Date**” or “**COD**” shall mean the commercial operation date of the Southern Property, as determined by Purdy Run in its sole and absolute discretion. For greater clarity, COD will occur coincident with the first confirmed sale of commercial Aggregate that is delivered FOB from the scales of Purdy Run or FOB the customer delivery location, which ever terms apply. Purdy Run will provide written notice to Tall Grass of the Commercial Operation Date no later than five (5) Business Days after such date.

“**Other Expenses**” shall mean ordinary expenses incurred in the operation and management of Purdy Run, including, without limitation, wages, salaries, payroll taxes, office and administrative expenses, utilities, accounting fees incurred by Tall Grass for the prudent operation and/or management of Purdy Run or any other expenses it incurs in performance of the Services under this Agreement not otherwise itemized on **Schedule 1**.

"Business Day" shall mean Monday through Friday, excluding holidays acknowledged by the Federal Reserve Bank including New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

"Person" shall mean any limited partner, member, manager, director, officer, shareholder, corporation, sole proprietorship, joint stock association, partnership, limited partnership, limited liability company, joint venture, individual person or any other entity.

Article III - Status as Independent Contractor

Both Purdy Run and Tall Grass expressly acknowledge and agree that Tall Grass is an independent contractor and not a partner, joint venture, agent or employee of Purdy Run by virtue of this Agreement. All of Tall Grass's activities in performing the Services shall be at Tall Grass' sole risk and Tall Grass and any and all employees of Tall Grass that are actively engaged in providing the Services shall not be entitled to Workers Compensation or any other benefits or insurance protection provided by Purdy Run to its agents and employees. Purdy Run shall not in any way, directly or indirectly, be responsible for withholding federal, state or local taxes, or to maintain worker's compensation insurance, for or on behalf of Tall Grass or its employees. Tall Grass shall be solely responsible for complying with and paying any and all taxes applicable to compensation received under this Agreement. Subject to the terms of this Agreement, as an independent contractor, Tall Grass shall be solely responsible for determining the means and methods for performing the Services.

Article IV - Standard of Care

Tall Grass represents, warrants and agrees that Tall Grass (i) shall perform and discharge the Services with the degree of skill and care of a prudent, diligent, skilled and experienced person using sound profession procedures and practices, performing such Services in a workmanlike manner and in conformity with generally accepted professional standards prevailing at the time the Services are performed; (ii) shall use best efforts in performing the Services; (iii) shall perform the Services in compliance with any and all **Applicable Laws**; (iv) has all licenses, permits, certifications and authorizations that are necessary to perform the Services; and (v) the performance of the Services shall not breach or otherwise violate any duties or obligations to, or any agreement or contract with, any third party or any other Person.

"Applicable Laws" shall mean, with respect to any governmental authority, (i) any law, statute, regulation, code, ordinance, license, order, writ, injunction, decision, directive, judgment, policy, decree, protocol, and any judicial or administrative interpretations thereof, (ii) any agreement, concession or arrangement with any other governmental authority and (iii) any license, permit or compliance requirement, in each case applicable to either Party and as amended or modified from time to time.

Article V - Use of Materials; Confidential Information; Non-Compete

1. **Use of Materials.** Purdy Run shall own all rights to any and all work product, patents, processes, copyrights, studies, flow charts, diagrams, devices, programs, source codes, inventions, original works of authorship, know-how, and other tangible or intangible material of any nature developed by or as a result of any of Tall Grass' Services for Purdy Run. Any work product generated by Tall Grass shall be deemed a work made for hire. If any of such work product shall be deemed other than a work for hire, Tall Grass hereby assigns to Purdy Run all right, title and interest in and to such work product. Tall Grass agrees to execute and deliver such documents and instruments as Purdy Run may deem necessary and appropriate to transfer to the company any right, title, or interest, including copyrights, Tall Grass has in any such work.

2. **Confidential Information; Confidential Materials.** "Confidential Information" means all information (i) that has been or shall be owned, licensed or developed (at any time before or after the date of this Agreement) by or for the benefit of a Purdy Run, or any parent, affiliate, or subsidiary of Purdy Run ("Purdy Run Affiliates") (including under this Agreement) that is not generally known publicly (regardless of whether such information is a trade secret, patentable or copyrightable) and (ii) that relates directly or indirectly to the Business or one of more projects developed under this Agreement. "Confidential Information" includes, without limitation, information that Purdy Run or any of the Purdy Run Affiliates designates as being confidential or which, under the circumstances surrounding disclosure, should be treated as confidential, all software and related documentation, including, without limitation, source or object codes for such software, product planning information, all customers (including customer names and contact information), customer lists and suppliers of a Purdy Run or any of the Purdy Run Affiliates, the prices and/or margins Purdy Run obtains or has obtained from the sale of any of its products or services, the prices Purdy Run or any of the Purdy Run Affiliates pays or has paid for inventory, materials, or supplies, contractors and subcontractors, Purdy Run's or any of the Purdy Run Affiliates' financial statements and reports, valuation reports, tax returns, and other financial information, Purdy Run's cost and expense data, equipment specifications, equipment components, production methods, distribution data, trade secrets, secret processes, and formulae, Purdy Run's or any of the Purdy Run Affiliates' marketing and business methods, strategies, plans and materials, the identities, talents, skills, and compensation of Purdy Run's or any of the Purdy Run Affiliates' employees, as well as any information received from others that Purdy Run is obligated to treat as confidential.

"Confidential Information" shall not include information that Tall Grass can conclusively establish (i) entered or subsequently enters the public domain without Tall Grass' breach of any fiduciary or legal duty, including, without limitation, its duty under this Agreement; or (ii) is independently developed by Tall Grass outside of Tall Grass' duties under this Agreement.

"Confidential Materials" means all tangible goods or materials containing Confidential Information, including without limitation written or printed documents, plans, specifications, equipment, work in progress, and computer disks or tapes.

3. **Obligations.** During the Term of this Agreement, as may be extended by the parties, and for five (5) years after termination of this Agreement by expiration of the Term or

otherwise, Tall Grass and its managers, members, directors, officers, employees, contract employees, agents and shareholders:

(i) shall not, at any time or in any manner or form, directly or indirectly, disclose, use, make available or communicate to any Person any Confidential Information or Confidential Materials;

(ii) shall hold Confidential Information and Confidential Materials of Purdy Run in trust and in a fiduciary capacity for the sole benefit and use of Purdy Run;

(iii) shall not use the Confidential Information to compete, directly or indirectly, with the Purdy Run, either alone or with any other Person; and

(iv) shall not disclose, reproduce, summarize, distribute or use Confidential Information or Confidential Materials, except in reasonable pursuit of the authorized duties of Tall Grass under this Agreement.

Tall Grass acknowledges and agrees that all Confidential Materials and all other originals and copies of records, reports, documents, manuals, lists, plans, drawings, memoranda, notes and other documentation related to the Business of Purdy Run, whether or not containing any Confidential Information, shall be the sole and exclusive property of Purdy Run and shall be returned to Purdy Run upon the termination of this Agreement or upon the written request of Purdy Run.

Tall Grass shall notify Purdy Run as soon as reasonably possible upon discovery of any unauthorized use or disclosure of Confidential Information or Confidential Materials, or any other breach of this Agreement, and will reasonably cooperate with Purdy Run to help Purdy Run regain possession of the Confidential Information or Confidential Materials and prevent its further unauthorized use or disclosure.

If Tall Grass is served with subpoena or other compulsory judicial or administrative process calling for production of Confidential Information or Confidential Materials, Tall Grass shall as soon as reasonably possible notify Purdy Run and shall take such action as directed by Purdy Run as Purdy Run deems reasonably necessary to protect its interests.

If any term or provision of this Article V is breached, Tall Grass agrees that Purdy Run's property, personal rights or property rights or interests will suffer irreparable harm, and that injunctive and other equitable relief shall issue on a prima facie showing that Tall Grass has breached such term or provision of this Agreement. However, except to the extent that such rights and remedies are limited, excluded or disclaimed under this Article V, (i) the foregoing shall not be construed as prohibiting Purdy Run from pursuing any other remedies at law or in equity for such breach, including the recovery of damages, all of which shall be cumulative and not alternative and shall be in addition to (and not in lieu of) every right and remedy under this Agreement, any other agreement between the parties, or now or hereafter existing at law, in equity, by statute or otherwise; and (ii) the election to pursue one or more rights and/or remedies shall not constitute a waiver of the right to pursue other rights and remedies. No posting of bond or other

undertaking shall be necessary in any action by Purdy Run to obtain injunctive and/or other equitable relief.

4. **Remedies for Breach.** The parties acknowledge and agree that it would be difficult and impractical to calculate and ascertain accurately or definitively the damages which would be sustained by Purdy Run as a result of a breach by Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders of Article IV of this Agreement. Accordingly, Purdy Run shall have the following remedies (in addition to any other remedies at law, in equity or otherwise provided under the Agreement) in the event of a breach of this Article V:

(a) Purdy Run shall have the right to obtain an ex parte temporary restraining order and preliminary and permanent injunctions restraining and enjoining Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders from initiating or continuing any breach of Article V of this Agreement;

(b) Purdy Run shall have the right to recover all damages sustained by Purdy Run directly or indirectly as a result of any breach by Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders of this Article V;

(c) Purdy Run shall have the right to recover from Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders, all costs and expenses, including reasonable attorneys' fees, incurred by Purdy Run in any litigation relating to a breach of this Article V or any other provision of this Agreement.

5. **Non-Compete.** During the Term of this Agreement, as may be extended by the parties, and for five (5) years after termination of this Agreement by expiration of the Term or otherwise, Tall Grass and its managers, members, directors, officers, employees, contract employees, agents and shareholders, shall not, directly or indirectly, compete with the Purdy Run in the Business in the Business Territory, alone as principal, agent on behalf of others, jointly with others or as a shareholder, partner, director, officer, member, manager, representative, independent contractor, consultant, agent, employee, member, manager or advisor to or of any Person.

6. **Survival.** The provisions of this Article V shall survive termination of this Agreement by completion of the Services, by default, termination or otherwise.

Article VI - Termination

Purdy Run shall have the right to terminate this Agreement upon thirty (30) days written notice to Tall Grass if (i) Purdy Run ceases to operate the Business; (ii) there is a sale, exchange, lease and/or disposition of all or substantially all the assets of Purdy Run, including, without limitation, the sale or other disposition of the Purdy Run's interest in the Southern Property and/or substantially all of any other real estate in which the Company has any interest; (iii) there is a "**Company Change of Control Transaction**" (as defined in the draft of the Operating Agreement of Purdy Run Aggregates II, LLC, a proposed Michigan limited liability company

("Purdy Run II"), which draft is attached hereto as Exhibit B and incorporated herein by reference). Upon the lapse of such thirty (30) day period, such termination shall automatically be effective, without any further action on the part of any party, and neither party shall have any further liability or obligation to the other party under this Agreement or otherwise, except for any liability that arises out of any act, omission, occurrence or event that took place prior to such termination date.

Purdy Run shall also have the right to terminate this Agreement for "Cause." "Cause" shall mean any of the following: (i) acts of thievery, fraud, moral turpitude, dishonesty or gross misconduct; (ii) negligence in the performance of the Services; (iii) gross mismanagement; (iv) willful nonfeasance; (v) any breach of any provision, representation, warranty, covenant or obligation of the Agreement by any Tall Grass or its employees, directors, officers, shareholders, members, managers, agents, representatives or subcontractors; (vi) any violation of any Applicable Law by any Tall Grass or its employees, directors, officers, shareholders, members, managers, agents, representatives or subcontractors; (vii) breach or violation of any duties or obligations to (or agreements with) any third party or Person in connection with the performance of the Services.; or (viii) failure by Tall Grass to meet fifty percent (50%) of the EBITDA Targets for two (2) consecutive quarters, commencing in the first quarter of 2019. Termination for cause (A) shall be immediately effective upon notice from Purdy Run if such termination is under clause (i), (iii), (iv) or (viii) or if Purdy Run shall reasonably and in good faith determine that the conduct or cause specified in such notice is not curable or (B) upon thirty (30) days' notice from Purdy Run if Purdy Run shall reasonably and in good faith determine that the conduct or cause specified in such notice is curable. Upon Tall Grass' failure to cure such breach or violation of this Agreement within such time frame, this Agreement shall automatically terminate without any further action on the part of any party.

In the event of termination, Purdy Run will pay Tall Grass for Services satisfactorily performed prior to the effective date of termination. In the event of termination, prior to receiving such payment, Tall Grass shall: (i) deliver to Purdy Run all records, books, files, reports, drawings or other documents pertaining to the management, maintenance, operation and marketing of Purdy Run, including, without limitation, all records relative to the employees, suppliers, finances, and affairs of Purdy Run; (ii) deliver and assign, transfer or otherwise convey to Purdy Run all contracts and all personal property relating to or used in the management, operation and maintenance of Purdy Run; (iii) deliver all funds held by Tall Grass on behalf of Purdy Run; (iv) return all Confidential Materials to Purdy Run; and (v) render such assistance (before and after such payment) as Purdy Run might reasonably request to facilitate an orderly transition in the management and operation of Purdy Run.

In the event of termination, pursuant only to a Company Change of Control Transaction, Tall Grass will be entitled to receive cash compensation ("Termination Compensation") in accordance with the following terms:

(i) if during a period commencing on the Effective Date and ending three (3) years following such date, an amount equal to 12 months of the then prevailing Management Fee; or

(ii) if during a period commencing on the Effective Date and ending between three (3) years plus one (1) day and four (4) years, an amount equal to 50% of the then prevailing Management Fee; or

(iii) if during a period commencing on the Effective Date and ending between four (4) years plus one (1) day and five (5) years, an amount equal to 25% of the then prevailing Management Fee; after which time, there shall be no such Termination Compensation.

Article VII – Indemnity

Tall Grass, on behalf of Tall Grass and Tall Grass's employees, directors, officers, shareholders, members, managers, agents, representatives, subcontractors and any successors and assigns of any of the foregoing, (individually "**Tall Grass Party**" and collectively "**Tall Grass Parties**"), shall indemnify and hold harmless (and, upon request, defend with counsel acceptable to the Purdy Run Party (as defined below) Purdy Run and Purdy Run's employees, directors, officers, shareholders, members, managers, agents attorneys, contractors and subcontractors and any successors and assigns of any of the foregoing, jointly and severally (individually a "**Purdy Run Party**," and collectively "**Purdy Run Parties**"), from and against any and all claims, causes of action, demands, assessments, deficiencies, judgments, liabilities, lawsuits, proceedings, damages (consequential, incidental, direct and indirect), expenses, costs and fees of any kind or nature, including, without limitation, court costs, attorneys' fees, expenses, interest, fines, penalties, and all amounts paid in investigation, defense or settlement of any of the foregoing, whether or not any such demands, claims, or allegations of third parties are meritorious (collectively, "**Losses**") resulting from or arise out of, directly or indirectly, (i) any breach of any provision, representation, warranty, covenant or obligation of the Agreement by any Tall Grass Party; (ii) any violation of any Applicable Law by any Tall Grass Party; and/or (iii) any breach or violation by any Tall Grass Party of any duties or obligations to (or agreements with) any third party or Person in connection with the performance of the Services; provided however that the Tall Grass Party shall not be liable for any damages to the extent such damages result from or arise out of the negligence, gross negligence or intentional misconduct of any Purdy Run Party.

Purdy Run on behalf of Purdy Run Parties shall indemnify and hold harmless (and, upon request, defend with counsel acceptable to Tall Grass Party) Tall Grass and Tall Grass Parties from and against any damages and any amounts paid in settlement of any damages that result from or arise out of, directly or indirectly, (i) any breach of any provision, representation, warranty, covenant or obligation of the Agreement by any Purdy Run Party; and/or (ii) any violation of any Applicable Law by any Purdy Run Party; provided however that the Purdy Run shall not be liable for any damages to the extent such damages result from or arise out of the negligence, gross negligence or intentional misconduct of any Tall Grass Party.

Except for a breach of Article V by Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders, no provision of this Agreement shall be construed to impose any personal or pecuniary liability upon any officer, director, employee, contract employee, manager, member, agents, contractors and subcontractors of either party.

In no event shall a party have any liability to any other party hereunder for any special, indirect, exemplary, punitive or consequential damages of any kind, including, without limitation, loss or damage resulting from loss of use, loss of profits or revenue, cost of capital, loss of goodwill or like items of loss or damage, whether such claim is based in contract, tort, other applicable law, principles of common law, or in equity. Notwithstanding the foregoing or anything else in this Agreement to the contrary, if Tall Grass and/or its managers, members, directors, officers, employees, contract employees, agents and shareholders, breaches any of its obligation under Article V, the limitations set forth in this paragraph shall not be applicable; without limiting the generality of the foregoing, Purdy Run shall have the right to recover lost profits as part of its damage claim.

If a damage claim is proven by Purdy Run, Purdy shall have the right to withhold and offset any and all Management Fee payments due under this Agreement until such time as such damage claim (with interest at the then prevailing judgment interest rate under federal law) is paid in full. The provisions of this paragraph shall not limit any other rights and remedies that Purdy Run may have under this Agreement, at law or in equity.

The provisions of this Article VII shall survive termination of the Agreement by completion of the Services, by default or otherwise.

Article VIII - Miscellaneous Provisions

1. **Prior Agreements.** This Agreement embodies and constitutes the entire understanding between the parties with respect to the subject matter contained in this Agreement, and all prior agreements, understandings, representations and statements, oral or written, with respect to the subject matter contained herein, are superseded by this Agreement.

2. **Amendments.** Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated, except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

3. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and/or permitted assigns; provided, however, that the rights, duties, and obligations of Tall Grass under this Agreement shall not be assigned or subcontracted without the prior written consent of Purdy Run.

4. **Availability of Information.** All financial statements, reports, billings and other documents shall properly reflect the facts about all activities and transactions handled for the accounts of Purdy Run. Purdy Run's duly authorized representatives shall have, during the term of this Agreement and for two (2) years thereafter, access at all reasonable times to all of the Tall Grass' personnel, accounts and records that may be needed to verify and audit compliance with the provisions of this Agreement and all charges to Purdy Run.

5. **Notice.** All notices, requests, consents, approvals, waivers and other communications hereunder shall be in writing and shall be deemed given (i) when delivered, if hand-delivered, (ii) when sent via email, (iii) one (1) Business Day after delivery to a nationally recognized overnight service for next day delivery, (iv) the date deposited into the U.S. mail, or (v) if otherwise delivered, upon delivery using the information below:

If to Purdy Run:

Purdy Run Aggregates, LLC
ATTN: Todd Karry
Energy Fundamentals Group
Services Company, LLC, Manager
33717 Woodward Avenue, #600
Birmingham, MI 48009
Email: tkarry@efgroupllc.com

With Copy to:

Hainer & Berman, P.C.
ATTN: Michael J. Hainer, Esq.
24255 W. 13 Mile Road, Suite 270
Bingham Farms, MI 48025
Email: mhainer@hainerberman.com

If Tall Grass:

Tall Grass Management Partners, LLC
9011 Castle Harbour Circle
Vero Beach, FL 32963
Attn: J.H.W. Gefaell
Email: jaygefaell@gmail.com

or such other addresses or numbers as shall be designated by a party in a written notice to another.

6. **Waiver.** The rights and remedies of the parties to the Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement or the documents referred to in the Agreement will operate as a waiver of such right, power, or privilege. No claim or right arising out of the Agreement can be waived by one party, in whole or in part, unless such waiver is in a writing signed by such party.

7. **Governing Law.** The laws of the State of Michigan shall govern the validity, performance and enforcement of the Agreement without regard to choice of law principles.

8. **Severability.** If any term hereof shall be deemed to be invalid, illegal or unenforceable, such provision shall be deemed amended to conform to Applicable Laws so as to be valid, legal and enforceable or, if it cannot be so amended, it shall be deleted from this Agreement and the balance of the Agreement shall continue in full force and effect. In addition, if any provision of Article V of this Agreement is held to be unenforceable, arbitrary or against public policy, such provision will be considered divisible both as to time, geographic area and any other relevant feature, with each month of the specified period being deemed a separate period of time, it being the intention of the parties to this Agreement that a lesser period of time, geographic area,

occupational limitation or other relevant feature which is determined to be reasonable, not arbitrary and not against public policy, shall have been forced against Tall Grass.

9. **Captions.** All captions contained in the Agreement are included for convenience only and form no substantive part of the Agreement.

10. **Binding Effect.** The benefits accruing under and by reason of the Agreement shall inure to the benefit of Purdy Run and its successors and assigns.

11. **Counterparts/Facsimiles.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Facsimiles, photocopies and electronic versions (including, without limitation, .pdf versions) shall serve as originals.

12. **Headings.** The headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

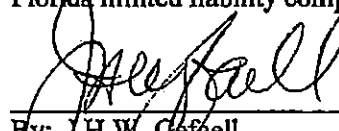
13. **Review.** The parties hereby acknowledge and agree that they have carefully read the Agreement; had an opportunity to discuss it with their attorneys and/or advisors should they so desire; and that they understand all of the terms and conditions set forth in this Agreement. The person executing this Agreement on behalf of the Tall Grass and Purdy Run, respectively, is duly authorized to execute and deliver this Agreement.

14. **Waiver of Conflict/Document Review and Counsel.** The parties acknowledge and agree that (a) Hainer & Berman, P.C. and/or Michael J. Hainer have acted, acts and will continue to act in the future as legal counsel, in connection with this transaction and/or other unrelated matters for (i) Todd Karry, Energy Fundamentals Group Services Company, LLC, EFG West Virginia, LLC, Purdy Run or (ii) entities (including, without limitation, corporations, partnerships, limited partnerships, limited liability companies, joint ventures, sole proprietorships or other business enterprises) in which Todd Karry owns or has an interest, (such persons and entities referred to in Section 10.17(a)(i) – (ii) are referred to collectively as the “**Represented Persons and Entities**”), and (b) in the event of any dispute or litigation between or involving any of the parties to this Agreement, Hainer & Berman, P.C. and/or Michael J. Hainer shall have the right to represent any of the Represented Persons and Entities, in any such dispute or litigation. All parties hereby waive any conflict of interest that may exist now or in the future as a result of any such representation.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date and year first written above.

**Tall Grass Management Partners, LLC, a
Florida limited liability company**



By: J.H.W. Gelfell
Its: Manager

**Purdy Run Aggregates, LLC, a Florida
limited liability company**

By: Energy Fundamentals Group Services
Company, LLC, a Michigan limited liability
company
Its: Manager

By: J.P. Todd Karry
Its: Manager

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date and year first written above.

**Tall Grass Management Partners, LLC, a
Florida limited liability company**

By: J.H.W. Gefaell
Its: Manager

**Purdy Run Aggregates, LLC, a Florida
limited liability company**

By: Energy Fundamentals Group Services
Company, LLC, a Michigan limited liability
company
Its: Manager



By: J.P. Todd Karry
Its: Manager

EXHIBIT A

EBITDA Targets/Management Fee

EBITDA Targets:

2018: EBITDA annual target \$1,563,500

2019: EBITDA annual target \$3,410,805

2020: EBITDA annual target \$3,646,879

EBITDA shall be calculated as provided on the attached Schedule I

Management Fee to be paid to Tall Grass:

1. If, on a semi-annual basis, Tall Grass meets 75%-100% of annual target; 100% of Management Fee;
2. If, on a semi-annual basis, Tall Grass meets 50%-74% of annual target: 75% of Management Fee; and
3. If, on a semi-annual basis, Tall Grass meets 49% or lower: 50% of Management Fee.

For the first year (2018), the parties agree that Tall Grass will not be measured and required to meet the EBITDA Target until the end of the 2018 calendar year; thereafter the EBITDA shall be measured and met semi-annually, commencing the first two quarters of 2019. Such reductions, if any, for the year 2019 and thereafter shall be applied to the Management Fee in the quarter immediately following the semi-annual measurement date (beginning of Q3 and beginning of Q1 following the semi-annual measurement period in which the EBITDA target was not met.


With specific regard to 2018 actual operating results (EBITDA achieved) as compared to the annual target, step downs reflected in 1, 2 and 3 above shall apply in the event the 2018 target is not achieved. Such reductions if any shall be applied to the Management Fee payable during the first quarter of 2019.

Schedule 1

Purdy Run Aggregates

Calculation of EBITDA

For the years Ending December 31

		2018	2019	2020	2021	2022	2023	2024	2025
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
	Cumulative Produced/Sold - tons	300,000	900,000	1,500,000	2,100,000	2,700,000	3,300,000	3,900,000	4,500,000
	Tons by Market:								
	30% General Construction	90,000	180,000	180,000	180,000	180,000	180,000	180,000	180,000
	15% Road Maintenance	45,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
	10% Mitigation	30,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
	15% Pipelines	45,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
	10% Coal Mining (access roads, general)	30,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
	5% Power Plants - River Docks	15,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
	15% Oil and Gas	45,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
	100%								
	Total Tons sold	300,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000
	(equivalent average monthly tons)	25,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
	(truck loads per year at 25 tons per truck)	1,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
	(trucks per month)	83	167	167	167	167	167	167	167
\$ 14.00	Price per ton (3%)	\$ 14.00	\$ 14.42	\$ 14.85	\$ 15.30	\$ 15.76	\$ 16.23	\$ 16.72	\$ 17.22
	Revenues by Market:								
	General Construction	\$ 1,260,000	\$ 2,595,600	\$ 2,673,458	\$ 2,753,672	\$ 2,836,282	\$ 2,921,371	\$ 3,009,012	\$ 3,099,282
	Road Maintenance	630,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000
	Mitigation	420,000	840,000	840,000	840,000	840,000	840,000	840,000	840,000
	Pipelines	630,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000
	Coal Mining (access roads, general)	420,000	840,000	840,000	840,000	840,000	840,000	840,000	840,000
	Power Plants - River Docks	210,000	420,000	420,000	420,000	420,000	420,000	420,000	420,000
	Oil and Gas	630,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000	1,260,000
	Total Sales	\$ 4,200,000	\$ 8,652,000	\$ 8,911,560	\$ 9,178,907	\$ 9,454,274	\$ 9,737,902	\$ 10,030,039	\$ 10,330,940
	Cost of Goods Sold (P&A)								
\$ 1.05	Labor	315,000	630,000	630,000	630,000	630,000	630,000	630,000	630,000
\$ 1.08	Fuel	324,000	660,960	674,179	687,563	701,416	715,444	729,753	744,348
\$ 2.09	Drilling/blasting	627,000	1,254,000	1,254,000	1,254,000	1,254,000	1,254,000	1,254,000	1,254,000
\$ 2.68	Equipment cost	804,000	1,608,000	1,608,000	1,608,000	1,608,000	1,608,000	1,608,000	1,608,000
\$ 0.43	Insurance	129,000	258,000	258,000	258,000	258,000	258,000	258,000	258,000
\$ 7.33	Total Cost of Goods Sold	2,199,000	4,410,960	4,424,179	4,437,563	4,451,416	4,465,444	4,479,753	4,494,348
	COGS per ton	\$ 7.33	\$ 7.35	\$ 7.37	\$ 7.40	\$ 7.42	\$ 7.44	\$ 7.47	\$ 7.49
\$ 0.75	Land Royalties	225,000	450,000	450,000	450,000	325,000	-	-	-
\$ -	\$ 1.90M Land Royalties	-	-	-	-	-	-	-	-
	Total Land Royalties	225,000	450,000	450,000	450,000	325,000	-	-	-
	Operating Expenses (3% increase annually)								
	Management Agreement - TallGrass ¹	162,500	329,875	339,771	349,964	360,463	371,277	382,416	393,888
	Insurance	12,000	12,360	12,731	13,113	13,506	13,911	14,329	14,758
	Annual Bond Charges (new per pay email)	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800
	Property tax	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200
	Engineering charges - survey	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
	Total Operating Expenses	212,500	380,235	390,502	401,077	411,969	423,189	434,744	446,646
	Operating Expenses Per Ton	\$ 0.71	\$ 0.63	\$ 0.65	\$ 0.67	\$ 0.69	\$ 0.71	\$ 0.72	\$ 0.74
	EBITDA	\$ 1,563,500	\$ 3,410,805	\$ 3,646,879	\$ 3,890,167	\$ 4,265,889	\$ 4,849,269	\$ 5,115,542	\$ 5,389,946
	EBITDA per ton	\$ 7.02	\$ 5.21	\$ 5.68	\$ 6.08	\$ 6.48	\$ 7.11	\$ 8.08	\$ 8.53

¹\$27,083 per month, inflated 3% every 12 months. Mgmt fee assumed to start at 1st prod'n, or estimated Jul 2018, with assumed annual increases in July of each year.

Purdy Run Aggregates, LLC

April 9, 2018

Tall Grass Management Partners, LLC,
2881 Jefferson Street,
Marianna, Florida 32446

Attention: Mr. J.H.W. Gefaell – Co-Senior Manager
Mr. Billy M. Ward – Co-Senior Manager & Director of Operations

**Management Agreement by and between
Purdy Run Aggregates, LLC
and
Tall Grass Management Partners, LLC**

Dear Sirs:

The purposes of this letter is to outline certain additional commercial understandings between the above captioned parties with respect to the Management Agreement. Tall Grass management Partners, LLC has proposed certain additional commercial terms to Purdy Run Aggregates, LLC for consideration, terms which are not reflected in the Management Agreement.

The following sets forth the further understanding between the parties in connection with these 3 specific matters.

1) **Incentive Mechanism** – Purdy Run Aggregates, LLC is prepared to offer Tall Grass Management Partners, LLC the opportunity to earn additional compensation over and above that which is defined in the Management Agreement subject to certain conditions. In any full fiscal period, the extent to which verifiable and reported operating results (measured as EBITDA), exceed that which is reflected per Schedule 1 of the Management Agreement, Tall Grass Management Partners, LLC will be entitled to receive an incentive payment equal to 20% of the excess EBITDA realized which is above the annual proforma targets per Schedule 1. The excess EBITDA if any, will be calculated on an annual basis, commencing the first full fiscal period (2019 proforma) as independently verified by the CPA firm handling annual financial statement preparation and reporting for the enterprise.

The Incentive Mechanism will be operative throughout the initial term of the Management Agreement. It is recognized and understood that any incentive payment that becomes payable will be subordinated in priority to any and all obligations of Purdy Run Aggregates, LLC, including loan repayment obligations, royalty payments due and payable, operating expenses etc. pursuant to the PRA LLC Operating Agreement or the Amended PRA Operating Agreement, whichever is operative.

2) **Management Fee Step-up** – As reflected at Article II "Compensation", the Management Fee shall be increased from 50% of the annual amount to 100% of the annual amount following the earlier of 3 months following the Effective Date of the Management Agreement or the Commercial Operating Date ("COD") of the project as defined in the Management Agreement. For greater clarity, the extent to which COD has not been achieved on or before the end of the three month development period, Tall Grass Management Partners, LLC will continue to be entitled to receive Management Fees at 50% of the annual amount for an additional two months provided progress continues to be made toward COD.

3) **Management Agreement Renewal** – Purdy Run Aggregates, LLC is not prepared to offer Tall Grass Management Partners, LLC a 10 year term for the Management Agreement. The initial term, as defined in the agreement is five years, subject to the provision relating to termination as defined. In addition, if after the initial five year term of the Management Agreement has expired, and there is an expectation that the operation will continue to require ongoing management as a commercial aggregate operation, and historical operating results (EBITDA) for Purdy Run Aggregates, LLC or Purdy Run Aggregates II, LLC as the case may be, have met or exceeded 70% of the Schedule 1 annual EBITDA targets, calculated on a five year historical average basis, Purdy Run Aggregate, LLC will renew the Management Agreement for a further 5 years, on terms substantially similar to the current agreement. Company Change of Control Transaction provisions as defined in the Management Agreement shall not apply to any renewal.

It is recognized and understood that this side-letter is intended to memorialize the further understanding between the parties in connection only with the specific proposals put forth by Tall Grass Management Partners, LLC and addressed herein. This side letter does not supersede or in any way impact or change the terms and conditions of the Management Contract. In the event there is a dispute or conflict with regard to the interpretation of this side-letter and the Management Contract, the terms and conditions of the Management Contract shall prevail.

The terms outlined in this side letter will become effective coincident with the closing of the transaction. To the extent Purdy Run Aggregates, LLC is the operating entity for a period of time post close, the terms outlined herein shall apply to PRA LLC and its proposed successor entity PRA II, LLC, following the planned merger.

PRA LLC is proposing the aforementioned terms on the basis that the transaction in connection with the project closes. This letter will be executed and become operative coincident with closing of all relevant agreements pertaining to the transaction.

Very truly yours,

PURDY RUN AGGREGATES, LLC

By: J.P. Todd Karry

Its: Manager

ACCEPTED AND AGREED:

TALL GRASS MANAGEMENT PARTNERS, LLC

By: J.H.W. Geisell

Title: Managing Member

By: Billy M. Ward

Title: _____

3) **Management Agreement Renewal** – Purdy Run Aggregates, LLC is not prepared to offer Tall Grass Management Partners, LLC a 10 year term for the Management Agreement. The initial term, as defined in the agreement is five years, subject to the provision relating to termination as defined. In addition, if after the initial five year term of the Management Agreement has expired, and there is an expectation that the operation will continue to require ongoing management as a commercial aggregate operation, and historical operating results (EBITDA) for Purdy Run Aggregates, LLC or Purdy Run Aggregates II, LLC as the case may be, have met or exceeded 70% of the Schedule 1 annual EBITDA targets, calculated on a five year historical average basis, Purdy Run Aggregate, LLC will renew the Management Agreement for a further 5 years, on terms substantially similar to the current agreement. Company Change of Control Transaction provisions as defined in the Management Agreement shall not apply to any renewal.

It is recognized and understood that this side-letter is intended to memorialize the further understanding between the parties in connection only with the specific proposals put forth by Tall Grass Management Partners, LLC and addressed herein. This side letter does not supersede or in any way impact or change the terms and conditions of the Management Contract. In the event there is a dispute or conflict with regard to the interpretation of this side-letter and the Management Contract, the terms and conditions of the Management Contract shall prevail.

The terms outlined in this side letter will become effective coincident with the closing of the transaction. To the extent Purdy Run Aggregates, LLC is the operating entity for a period of time post close, the terms outlined herein shall apply to PRA LLC and its proposed successor entity PRA II, LLC, following the planned merger.

PRA LLC is proposing the aforementioned terms on the basis that the transaction in connection with the project closes. This letter will be executed and become operative coincident with closing of all relevant agreements pertaining to the transaction.

Very truly yours,

PURDY RUN AGGREGATES, LLC

By: J.P. Todd Karry

Its: Manager

ACCEPTED AND AGREED:

TALL GRASS MANAGEMENT PARTNERS, LLC

By: J.H.W Gefaell

Title: _____

By: Billy M. Ward

Title: Billy M Ward

EXHIBIT 2



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304-2345
Phone: (304) 926-0490
Fax: (304) 926-0456

Austin Caperton, Cabinet Secretary
dep.wv.gov

September 18, 2019

Purdy Run Aggregates, LLC
33717 Woodward Ave., No. 600
Birmingham, MI 48009

Certified Mail

Return Receipt Requested

91 7199 9991 7039 1698 2179

ADMINISTRATIVE CIVIL PENALTY ASSESSMENT NOTICE

Dear Permittee,

Enclosed is **Proposed Consent Order Number M-19-292** dated the 18th day of September 2019. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Division of Mining and Reclamation in response to Purdy Run Aggregates, LLC violating Chapter 22, Article 11, of the West Virginia State Code.

This Proposed Consent Order is being offered pursuant to Chapter 22, Article 11, Section 22a of the West Virginia Code and Legislative Rule, Title 47, Series 30B (47CSR30B).

Please review the terms and conditions of the Proposed Consent Order and respond within thirty (30) days of your receipt of this letter. You may accept these terms and conditions by signing and returning the Proposed Consent Order to:

John Flesher, Acting Assistant Deputy Director
West Virginia Department of Environmental Protection
Division of Mining and Reclamation
601 57th St. SE
Charleston, WV 25304

If you wish to request an Informal Hearing before an Assessment Officer, please respond to Michelle Sturey, in writing, at the above address within thirty (30) days of receipt of the Proposed Consent Order. Should you request an Informal Hearing, you will receive notice of its time, place, and location, at least fifteen (15) calendar days in advance.

Promoting a healthy environment.

Upon conclusion of this proceeding and your reaching agreement with the WVDEP on a resolution of the violation(s) contained in the Proposed Consent Order, the Proposed Consent Order will be designated as a Draft Consent Order and will be subject to the Public Notice and comment requirements set forth in West Virginia Code Chapter 22-11-22a. This notice will identify the responsible party, the specific enforcement action to be taken and the Civil Administrative Penalty assessment. The WVDEP will consider all comments received during the thirty (30) day comment period and the Draft Consent Order may be subject to change. Should the Proposed settlement be modified after the comment period, you have the option of choosing not to enter into the Draft Consent Order.

Failure to respond to this correspondence as required shall be considered as your refusal to participate in this process.

Sincerely,

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

John Flesher
Acting Assistant Deputy Director



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Austin Caperton, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Purdy Run Aggregates, LLC
33717 Woodward Avenue, #600
Birmingham, MI 48009

DATE: September 18, 2019

ORDER NO.: M-19-292

INTRODUCTION

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Purdy Run Aggregates, LLC (hereinafter "Purdy").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Purdy holds West Virginia National Pollution Discharge Permits ("NPDES") issued by the West Virginia Department of Environmental Protection ("WVDEP") for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits are WV1029363 ("Permits").
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP's authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Purdy has failed to submit required monthly Discharge Monitoring Reports ("DMRs") information on its effluent discharge and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This Failure to Submit has occurred through not electronically filing the DMRs as prescribed by the Division of Mining and Reclamation ("the Division").

Promoting a healthy environment.

4. Purdy has reported the quality of its discharges and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This reporting has occurred through electronic filing of Discharge Monitoring Reports ("DMRs") as prescribed by the Division of Mining and Reclamation ("the Division").
5. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and mining-related operations, including the information submitted by Purdy for the Permits ("the Database"). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
6. The WVDEP has evaluated agency records beginning with April 2016 through March 2019 regarding Purdy Permit(s), DMRs, and other related information, including information submitted by the Purdy at the request of WVDEP, and has completed an evaluation of Purdy DMRs compliance.
7. Based on its evaluation, the WVDEP has documented violations of the permitted effluent limits for the WVDEP NPDES Permits. The results of this investigation are included in Attachment 2 which list the WVDEP NPDES Permits that have violations.
8. Based on its evaluation, the WVDEP has documented the failure to report Monthly DMRs information required by the WVDEP NPDES Permits. The results of this investigation are included in Attachment 3 which list the WVDEP NPDES Permits that have violations.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code it is hereby agreed between the parties, and ORDERED by the Director:

1. Purdy shall immediately take all measures to initiate compliance with all terms and conditions of the Permit(s), Outlets(s) and Parameter(s) indicated in Table A below:

PERMIT	OUTLET	PARAMETER
WV1029363	002	Total Suspended Solids
	002	Aluminum, Total

2. Purdy shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
3. Within 90 days of entry of this Order, Purdy shall submit for the Division's approval a proposed Corrective Action Plan (CAP) with schedule and possible applications for modification(s), outlining how and when Purdy will achieve compliance with Permit(s) limits for which compliance cannot be immediately achieved. This CAP shall address the Permit(s) listed in Table A of this Order. The CAP will include costs of construction, maintenance, and operation.
4. The Division shall review the proposed CAP and promptly notify Purdy of any comments it may have with the proposed CAP. The parties agree to work together to resolve any

issues related by the Division with regards to the CAP. Within 30 days of receipt of the Division's approval of the CAP, Purdy shall begin the implementation of the plan in accordance with the scheduled provided therein. Upon approval, the CAP shall be considered a part of this Order.

5. Because of Purdy WVDEP NPDES violations of the Permit(s), Purdy shall be assessed a Civil Administrative Penalty of \$30,630 (thirty thousand six hundred and thirty dollars) to be paid to the Department of Environmental Protection within thirty (30) days of demand for penalty from WVDEP. The penalty amount will be deposited in the Stream Restoration Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or Federal Law.
6. Total Payment in the amount of \$30,630 (thirty thousand six hundred and thirty dollars) shall be mailed to:

John Flesher, Acting Assistant Deputy Director
Division of Mining and Reclamation
WV-DEP
601 57th Street SE
Charleston, WV 25304

7. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act for violations of the effluent limits for outlets which occurred April 2016 through March 2019 in relation to the specified Permits.
8. Stipulated Penalties
 - a. Beginning with the effective date of this Order, Purdy shall be liable for stipulated penalties for violations of items 2 through 6 of the Order for Compliance of this Order. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
 - i. The first through the 15th day of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$1,000 per day per violation.
 - ii. The 16th through 30th days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$2,000 per day per violation.
 - iii. The 31st day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.
 - b. For the period beginning April 2019 through the termination date of this Order, Purdy shall be liable for stipulated penalties for non-compliances for Permit(s), Outlet(s) and Parameter(s) specified in Table A in the following amounts:
 - i. \$1,000 for each violation of a daily maximum limit;
 - ii. \$3,000 for each violation of a monthly average limit;

- iii. \$10,000 for each month for each of the Permits for which Purdy fails to submit a required discharge monitoring report for one or more outlets with limits.

OTHER PROVISIONS

1. Purdy hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Purdy agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Purdy does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Purdy other than proceedings, Administrative or Civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Purdy shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Purdy becomes aware of such a delay, notification shall be provided to the Acting Assistant Deputy Director and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Purdy intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Purdy (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Purdy of the obligation to comply with any applicable law, Permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Purdy to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Purdy, its successors and assigns.

7. This Order shall terminate upon the verification of WVDEP that Purdy has met all requirements with the Order and is in full compliance.

Company Representative, Representative Title
Purdy Run Aggregates, LLC

Date

Public Notice begin:

Date

Public Notice end:

Date

Harold D. Ward, Director
Division of Mining and Reclamation
Deputy Secretary
Department of Environmental Protection

Date

ATTACHMENT 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following schedule:

a. Submit required Corrective Action Plan	Within 90 days of effective date of this order
b. Submit a Semi-Annual Status Report to the Acting Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Within 60 days of submittal of Corrective Action Plan through December 31, 2020
c. Submit a Quarterly Status Report to the Acting Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Beginning January 1, 2021 through termination of Order
d. Continue to monitor all applicable permits/outlets for concentrations per approved final effluent limits and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

ATTACHMENT 2

WV1029363, Outlet 002, DMR Exceedances - MAX DAILY 07/08/2016-03/31/19						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max Daily	Reported Max Daily	% Exceedance	Min.	Mod.	Max.
10/31/2018	00530 - Total Suspended Solids	MG/L	70	84	20.00%	X		
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.25	66.67%	X		
11/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.24	65.33%	X		
12/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.30	73.33%	X		
1/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.49	98.67%	X		
2/28/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.22	62.67%	X		
3/31/2019	00530 - Total Suspended Solids	MG/L	70	171	144.29%		X	
3/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.73	130.67%		X	
WV1029363, Outlet 002, DMR Exceedances - AVG MONTHLY 07/08/18-03/31/19						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg Monthly	Reported Avg Monthly	% Exceedance	Min.	Mod.	Max.
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.95	120.93%		X	
10/31/2018	00530 - Total Suspended Solids	MG/L	35	48.5	38.57%	X		
11/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.63	46.51%		X	
12/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.885	105.81%		X	
1/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	1.06	146.51%		X	
2/28/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	.95	120.93%		X	
3/31/2019	00530 - Total Suspended Solids	MG/L	35	93	165.71%		X	
3/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	1.01	134.88%		X	

WV1029363 non pH Totals		Degree of non-compliance		
Min.	Mod.	Max.		
	0	0		

plus pH				
Min.	Mod.	Max.		
	0	0		

WV1029363 Totals		Degree of non-compliance		
Min.	Mod.	Max.		
	0	0		

ATTACHMENT 3**Failure To Submits - Purdy Run Aggregates, LLC (M-19-292)**

Permit	Outlet	Quarter	Year
WV1029363	001 (Semi-Monthly)	3Q	2018
	002 (Semi-Monthly)	3Q	2018
	DPR (Semi-Monthly)	3Q	2018
	USPR 1 (Semi-Monthly)	3Q	2018

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Purdy Run Aggregates, LLC

WVNPDES No.:

WV1029363

Treatment System Design Maximum Flow: N/A MGDTreatment System Actual Average Flow: N/A MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			No T	No T	No T	T	T	T	TAI	TAI	TAI	TI	TI	TI
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1
	Average Potential for Harm Factor		1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	3

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
No T	Minor	Minor	\$1,000	7	\$7,000
No T	Minor	Moderate	\$1,500	9	\$13,500
No T	Moderate	Major	\$4,200		\$0
T	Moderate	Minor	\$2,400		\$0
T	Moderate	Moderate	\$3,400		\$0
T	Moderate	Major	\$4,600		\$0
T AI	Moderate	Minor	\$2,800		\$0
T AI	Moderate	Moderate	\$3,800		\$0
T AI	Moderate	Major	\$5,000		\$0
T I	Moderate	Minor	\$2,200		\$0
T I	Moderate	Moderate	\$3,200		\$0
T I	Moderate	Major	\$4,400		\$0
0	FALSE	FALSE	FALSE		\$0
TIAL	Moderate	Minor	\$2,600		\$0
TIAL	Moderate	Moderate	\$3,600		\$0
TIAL	Moderate	Major	\$4,800		\$0
0	FALSE	FALSE	FALSE	1	\$0
FTS	Major	Major	\$10,000		\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$20,500

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

- 6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase
- 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum
- 6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)
- 6.2.b.7 - Public Interest (increase to be determined)
- 6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)
- 6.2.b.9 - Staff investigative costs (increase to be determined)
- 6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

- 6.2.b.2 - Good Faith - 10% decrease to 10% increase
- 6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

Page 5 of 5

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$2,050
6.2.b.4 - Compliance/noncompliance history -	10		\$2,050
6.2.b.6 - Economic benefits - (flat monetary increase)	\$6,000		\$6,000
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$10,130
Penalty =			\$30,630

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$4,000
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$2,000
Estimated Economic Benefit	\$6,000
Comments: Competitive advantage: Effluent violations @ \$1,000/quarter x 2 quarters = \$2,000 Monitoring & Reporting: Failure to submit DMR outlets 001, 002, DPR and USPR 1 for 3Q18 @ \$1,000 each = \$4,000.	

Penalty Calculation Variables

No T: Non-trout stream

T: Trout stream

TAI: Trout stream and impaired for Aluminum

TI: Trout stream and impaired for Iron

TIAI: Trout stream and impaired for both Iron and Aluminum

Sources for determining trout and impairment status:

~ U.S. EPA approved Section 303(d) Listing and Supplemental Tables Only

https://dep.wv.gov/WWE/WATERSHED/IR/Pages/303d_305b.aspx

~ 47CSR2

(TITLE 47 -LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER RESOURCES
SERIES 2
REQUIREMENTS GOVERNING WATER QUALITY STANDARDS)

EXHIBIT 3



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street, SE
Charleston, WV 25304-2345
Phone: (304) 926-0490
Fax: (304) 926-0456

Austin Caperton, Cabinet Secretary
dep.wv.gov

September 30, 2020

Purdy Run Aggregates, LLC
33717 Woodward Ave., No. 600
Birmingham, MI 48009

Certified Mail

Return Receipt Requested

ADMINISTRATIVE CIVIL PENALTY ASSESSMENT NOTICE

Dear Permittee,

Enclosed is **Proposed Consent Order Number M-19-292** dated the 30th day of September 2020. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Division of Mining and Reclamation in response to Purdy Run Aggregates, LLC violating Chapter 22, Article 11, of the West Virginia State Code.

This Proposed Consent Order is being offered pursuant to Chapter 22, Article 11, Section 22 of the West Virginia Code and Legislative Rule, Title 47, Series 01 (47CSR01).

Please review the terms and conditions of the Proposed Consent Order and respond within thirty (30) days of your receipt of this letter. You may accept these terms and conditions by signing and returning the Proposed Consent Order to:

John Vernon, Assistant Deputy Director
West Virginia Department of Environmental Protection
Division of Mining and Reclamation
601 57th St. SE
Charleston, WV 25304

If you wish to request a final Informal Hearing before an Assessment Officer, please respond to Michelle Sturey, in writing, at the above address within thirty (30) days of receipt of the Proposed Consent Order. Should you request an Informal Hearing, you will receive notice of its time, place, and location, at least fifteen (15) calendar days in advance.

Promoting a healthy environment.

Upon conclusion of this proceeding and your reaching agreement with the WVDEP on a resolution of the violation(s) contained in the Proposed Consent Order, the Proposed Consent Order will be designated as a Draft Consent Order and will be subject to the Public Notice and comment requirements set forth in West Virginia Code Chapter 22-11-22. This notice will identify the responsible party, the specific enforcement action to be taken and the Civil Administrative Penalty assessment. The WVDEP will consider all comments received during the thirty (30) day comment period and the Draft Consent Order may be subject to change. Should the Proposed settlement be modified after the comment period, you have the option of choosing not to enter into the Draft Consent Order.

Failure to respond to this correspondence as required shall be considered as your refusal to participate in this process.

Sincerely,

John T Vernon

Digitally signed by John T
Vernon
Date: 2020.10.01 15:59:23
-04'00'

John Vernon
Assistant Deputy Director



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Austin Caperton, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Purdy Run Aggregates, LLC
33717 Woodward Avenue, #600
Birmingham, MI 48009

DATE: September 30, 2020

ORDER NO.: M-19-292

INTRODUCTION

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Purdy Run Aggregates, LLC (hereinafter "Purdy").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Purdy holds West Virginia National Pollution Discharge Permits ("NPDES") issued by the West Virginia Department of Environmental Protection ("WVDEP") for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits are WV1029363 ("Permits").
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP's authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Purdy has reported the quality of its discharges and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This reporting has occurred through electronic filing of Discharge Monitoring Reports ("DMRs") as prescribed by the Division of Mining and Reclamation ("the Division").
4. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and

Promoting a healthy environment.

mining-related operations, including the information submitted by Purdy for the Permits ("the Database"). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.

5. The WVDEP has evaluated agency records beginning with April 2016 through June 2020 regarding Purdy Permit(s), DMRs, and other related information, including information submitted by the Purdy at the request of WVDEP, and has completed an evaluation of Purdy DMRs compliance.
6. Based on its evaluation, the WVDEP has documented violations of the permitted effluent limits for the WVDEP NPDES Permits. The results of this investigation are included in Attachments 2-A and 2-B which list the WVDEP NPDES Permits that have violations.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code it is hereby agreed between the parties, and ORDERED by the Director:

1. Purdy shall immediately take all measures to initiate compliance with all terms and conditions of the Permit(s), Outlets(s) and Parameter(s) indicated in Table A below:

PERMIT	OUTLET	PARAMETER
WV1029363	002	Aluminum, Total

2. Purdy shall comply with the Compliance Schedule and reporting requirements contained in Attachment 1.
3. Within 90 days of entry of this Order, Purdy shall submit for the Division's approval a proposed Corrective Action Plan (CAP) with schedule and possible applications for modification(s), outlining how and when Purdy will achieve compliance with Permit(s) limits for which compliance cannot be immediately achieved. This CAP shall address the Permit(s) listed in Table A of this Order. The CAP will include costs of construction, maintenance, and operation.
4. The Division shall review the proposed CAP and promptly notify Purdy of any comments it may have with the proposed CAP. The parties agree to work together to resolve any issues related by the Division with regards to the CAP. Within 30 days of receipt of the Division's approval of the CAP, Purdy shall begin the implementation of the plan in accordance with the scheduled provided therein. Upon approval, the CAP shall be considered a part of this Order.
5. Because of Purdy WVDEP NPDES violations of the Permit(s), Purdy shall be assessed a Civil Administrative Penalty of **\$37,070 (thirty seven thousand and seventy dollars)** to be paid to the Department of Environmental Protection within thirty (30) days of demand for penalty from WVDEP. The penalty amount will be deposited in the Mining and Reclamation Operations Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or Federal Law.

6. Total Payment in the amount of \$37,070 (thirty seven thousand and seventy dollars) shall be mailed to:

**John Vernon, Assistant Deputy Director
Division of Mining and Reclamation
WV-DEP
601 57th Street SE
Charleston, WV 25304**

7. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act for violations of the effluent limits for outlets which occurred April 2016 through June 2020 in relation to the specified Permits.

8. Stipulated Penalties

- a. Beginning with the date of the Draft Order, Purdy shall be liable for stipulated penalties for violations of items 2 through 6 of the Order for Compliance of this Order. These stipulated penalties shall be effective until termination of this Order. These stipulated penalties accrue as follows:
 - i. The first through the 15th day of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$1,000 per day per violation.
 - ii. The 16th through 30th days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$2,000 per day per violation.
 - iii. The 31st day and all additional days of failing to comply with all terms and conditions of this Order shall result in payment of a stipulated penalty of \$3,000 per day per violation.
- b. For the period beginning on the date of the Draft Order through the termination date of this Order, Purdy shall be liable for stipulated penalties for non-compliances for Permit(s), Outlet(s) and Parameter(s) specified in Table A in the following amounts:
 - i. \$1,000 for each violation of a daily maximum limit;
 - ii. \$3,000 for each violation of a monthly average limit;
 - iii. \$10,000 for each month for each of the Permits for which Purdy fails to submit a required discharge monitoring report for one or more outlets with limits.

OTHER PROVISIONS

1. Purdy hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Purdy agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Purdy does not admit to any factual and legal determinations made by the Director and reserves all

rights and defenses available regarding liability or responsibility in any proceedings regarding Purdy other than proceedings, Administrative or Civil, to enforce this Order.

2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Purdy shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Purdy becomes aware of such a delay, notification shall be provided to the Acting Assistant Deputy Director and shall, within ten (10) working days of initial notifications, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Purdy intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Purdy (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Purdy of the obligation to comply with any applicable law, Permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Purdy to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Purdy, its successors and assigns.
7. This Order shall terminate upon the verification of WVDEP that Purdy has met all requirements with the Order and is in full compliance.
8. The effective date of the Draft Order shall be the date this Order is executed by Bluestone.
9. The effective final date of this Order shall be the date this Order is executed by the WVDEP.

Company Representative, Representative Title
Purdy Run Aggregates, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

Harold D. Ward, Director
Division of Mining and Reclamation
Deputy Secretary
Department of Environmental Protection

Date

ATTACHMENT 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following schedule:

a. Submit required Corrective Action Plan	Within 90 days of effective date of this order
b. Submit a Semi-Annual Status Report to the Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Within 60 days of submittal of Corrective Action Plan through December 31, 2021
c. Submit a Quarterly Status Report to the Assistant Deputy Director, Permit Inspector and NPDES Supervisor for each listed Permit	Beginning January 1, 2022 through termination of Order
d. Continue to monitor all applicable permits/outlets for concentrations per approved final effluent limits and submit per NPDES permit conditions	Monthly per Discharge Monitoring Report requirements

ATTACHMENT 2-A

WV1029363, Outlet 002, DMR Exceedances - MAX DAILY - 07/08/2016-03/31/19						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Max Daily	Reported Max Daily	% Exceedance	Min.	Mod.	Maj.
10/31/2018	00530 - Total Suspended Solids	MG/L	70	84	20.00%	X		
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.25	66.67%	X		
11/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.24	65.33%	X		
12/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.75	1.30	73.33%	X		
1/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.49	98.67%	X		
2/28/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.22	62.67%	X		
3/31/2019	00530 - Total Suspended Solids	MG/L	70	171	144.29%		X	
3/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.75	1.73	130.67%		X	
WV1029363, Outlet 002, DMR Exceedances - AVG MONTHLY - 07/08/16-03/31/19						Degree of Non-Compliance		
Date	Parameter	Units	Permitted Avg Monthly	Reported Avg Monthly	% Exceedance	Min.	Mod.	Maj.
10/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.95	120.93%		X	
10/31/2018	00530 - Total Suspended Solids	MG/L	35	48.5	38.57%	X		
11/30/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.63	46.51%		X	
12/31/2018	01105 - Aluminum, Total (as Al)	MG/L	.43	0.885	105.81%		X	
1/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	1.06	146.51%		X	
2/28/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	.95	120.93%		X	
3/31/2019	00530 - Total Suspended Solids	MG/L	35	93	165.71%		X	
3/31/2019	01105 - Aluminum, Total (as Al)	MG/L	.43	1.01	134.88%		X	

WV1029363 non pH Totals				Degree of non-compliance		
				Min.	Mod.	Maj.
				7	9	0

plus pH	0	0	0
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WV1029363 Totals				Degree of non-compliance		
				Min.	Mod.	Maj.
				7	9	0

ATTACHMENT 2-B

Exceedances 040119 to 063020

RESPONSIBLE PARTY	WVNPDES PERM	OUTLET	DATE	PARAMETER	REPORT AVG	REPORT MAX	LIMIT-AVG	LIMIT-MAX	UNITS	NONCOMPLIANCE	Degree of non-compliance			
PURDY RUN AGGREGATES, LLC	WV1029363	002	4/30/2019 0:00	01105 - Aluminum, Total (as Al)	1.35		.75		MG/L	010 - Exceeds Concentration Maximum	% Exceedance	Min	Mod	Max
PURDY RUN AGGREGATES, LLC	WV1029363	002	5/31/2019 0:00	01105 - Aluminum, Total (as Al)	.99		.75		MG/L	010 - Exceeds Concentration Maximum	80%	X		
PURDY RUN AGGREGATES, LLC	WV1029363	002	6/30/2019 0:00	01105 - Aluminum, Total (as Al)	.98		.75		MG/L	010 - Exceeds Concentration Maximum	92%	X		
PURDY RUN AGGREGATES, LLC	WV1029363	002	9/30/2019 0:00	01105 - Aluminum, Total (as Al)	2.78		.75		MG/L	010 - Exceeds Concentration Maximum	311%	X		
PURDY RUN AGGREGATES, LLC	WV1029363	002	4/30/2019 0:00	01105 - Aluminum, Total (as Al)	1.51		.43		MG/L	030 - Exceeds Concentration Average	271%		X	
PURDY RUN AGGREGATES, LLC	WV1029363	002	5/31/2019 0:00	01105 - Aluminum, Total (as Al)	.97		.43		MG/L	030 - Exceeds Concentration Average	135%		X	
PURDY RUN AGGREGATES, LLC	WV1029363	002	6/30/2019 0:00	01105 - Aluminum, Total (as Al)	.72		.43		MG/L	030 - Exceeds Concentration Average	126%		X	
PURDY RUN AGGREGATES, LLC	WV1029363	002	7/31/2019 0:00	01105 - Aluminum, Total (as Al)	.60		.43		MG/L	030 - Exceeds Concentration Average	67%		X	
PURDY RUN AGGREGATES, LLC	WV1029363	002	9/30/2019 0:00	01105 - Aluminum, Total (as Al)	2.78		.43		MG/L	030 - Exceeds Concentration Average	40%	X		
PURDY RUN AGGREGATES, LLC	WV1029363	002	9/30/2019 0:00	01045 - Iron, Total (as Fe)	1.68		1.21		MG/L	030 - Exceeds Concentration Average	547%			X
ALL TOTALS												2		1

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Purdy Run Aggregates, LLC WVNPDDES No.:

WV1029363

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			No T	No T	No T	T	T	T	TAI	TAI	TAI	TI	TI	TI
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1
	Average Potential for Harm Factor		1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	3

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

[illegible]