



ARKANSAS
Department of Environmental Quality

August 15, 2008

Darrell Smith
2435 Albert Pike
Hot Springs, Arkansas 71913

RE: Dam construction on Kelly Creek

Dear Mr. Smith:

On August 1, 2008, I performed a routine compliance inspection of the above referenced construction site in accordance with the provisions of the Federal Clean Water Act, the Arkansas Water and Air Pollution Control Act, and the regulations promulgated thereunder. This inspection revealed the following violations:

1. An earthen embankment was constructed on Kelly Creek without obtaining the appropriate permits; including, but not limited to a State Storm Water Permit; a State Short-term Activities Authorization; a county MS4 Storm Water Permit; and permit pursuant to Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers.
2. During the excavation of this earthen embankment, dredge/fill material was discharged into the waters of the state; this is a violation of the Arkansas Water and Air Pollution Control Act 8-4-217.(a)(1).
3. While still under construction, a portion of the embankment washed out depositing excessive amounts of sediment into Kelly Creek; this is a violation of the Arkansas Water and Air Pollution Control Act 8-4-217.(a)(1).
4. There has been no effort to stabilize the exposed areas or use sediment controls to prevent further sediment from entering the waters of the state.

The above items require your immediate attention. Please submit a written response to these findings to the Water Division Enforcement Section of this Department at the following address:

Water Division Enforcement Section
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317


This response should contain detailed documentation describing the course of action taken to correct the items noted. This corrective action should be completed as soon as possible, and the written response is due by August 30, 2008.

Darrell Smith
August 15, 2008
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For additional information you may contact the enforcement section by telephone at 501-682-0639 or by fax at 501-682-0910.

If I can be of any assistance, please contact me at 501-520-0541.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McSwain", with a long horizontal flourish extending to the right.

Jim McSwain
District 7 Field Inspector
Water Division

cc: Water Division Enforcement Branch
Water Division Permits Branch

	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Washington, D.C. 20460	Form Approved OMB No. 2040-0003
<h1 style="margin: 0;">NPDES Compliance Inspection Report</h1>		

Section A: National Data System Coding																												
Transaction Code			NPDES								Yr/Mo/Day					Inspec. Type		Inspector		Fac. Type								
1	N	2	5	3	A	R	R	1	5	0	0	0	0	11	12	0	8	0	8	0	1	17	18	W	19	S	20	2
Remarks																												
Inspection Work Days				Facility Evaluation Rating				BI		QA		-----Reserved-----																
67				69	70	N	71	N	72	N	73		74	75														80

Section B: Facility Data					
Name and Location of Facility Inspected (<i>For industrial users discharging to POTW, also include POTW name and NPDES permit number</i>) The Darrell Smith Dam Construction Site Canyon Spring Circle Royal, AR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">Entry Time/Date 1050 8/1/08</td> <td style="width:50%;">Permit Effective Date Not Permitted</td> </tr> <tr> <td>Exit Time/Date 1215 8/1/08</td> <td>Permit Expiration Date</td> </tr> </table>	Entry Time/Date 1050 8/1/08	Permit Effective Date Not Permitted	Exit Time/Date 1215 8/1/08	Permit Expiration Date
Entry Time/Date 1050 8/1/08	Permit Effective Date Not Permitted				
Exit Time/Date 1215 8/1/08	Permit Expiration Date				
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) Darrell Smith (Owner)	Other Facility Data				
Name, Address of Responsible Official/Title/Phone and Fax Number Darrell Smith (Owner) 2435 Albert Pike Hot Springs, Arkansas 71913	Contacted Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>				

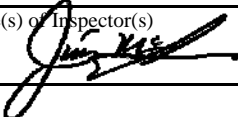
Section C: Areas Evaluated During Inspection							
(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)							
U	Permit	-	Flow Measurement	-	Operations & Maintenance	-	Sampling
-	Records/Reports	-	Self-Monitoring Program	-	Sludge Handling/Disposal	-	Pollution Prevention
-	Facility Site Review	-	Compliance Schedules	-	Pretreatment	-	Multimedia
U	Effluent/Receiving Waters	-	Laboratory	U	Storm Water	-	Other:

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

This inspection revealed that Mr. Smith constructed an earthen embankment without obtaining any of the applicable permits. At some point prior to this inspection, a portion of this embankment washed out into Kelly Creek. A significant amount of Dredge/Fill was deposited into the creek.

In Talking to the Garland County MS4 Inspector, he stated that he personally instructed Mr. Smith to obtain a storm water permit from the state and the county, along with obtain a 404 permit from the corp. Mr. Smith has made a request for an after-the-fact permit from the corps, but has failed to obtain any of the other required permits.

There is no evidence that any work pertaining to the storm water permit has been performed.

Name(s) and Signature(s) of Inspector(s) Jim McSwain 	Agency/Office/Telephone/Fax AR Dept. of Environmental Quality – Hot Springs Field Office – 501-520-0541 – Fax 501-520-5978	Date 8/8/08
Signature of Reviewer	Agency/Office/Phone and Fax Numbers	Date

A. General Information		
Site Name: <u>Darrell Smith</u>		
Latitude: ~ <u>34°28'51.33"N</u>	Longitude: ~ <u>93°15'30.21"W</u>	
Total Acreage: ~ <u>7</u>	Acreage Disturbed: ~ <u>8</u>	Starting Date: <u>not known</u>
Project Type: <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Roadway <input type="checkbox"/> Other:		
Construction Stage: <input type="checkbox"/> Clearing <input type="checkbox"/> Rough Grading <input type="checkbox"/> Infrastructure <input type="checkbox"/> Building Construction <input checked="" type="checkbox"/> Final Stabilization <input checked="" type="checkbox"/> Inactive <input type="checkbox"/> Other:		
Permit Type: <input checked="" type="checkbox"/> General <input type="checkbox"/> Individual <input type="checkbox"/> Unpermitted	Site Posted: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Improper	
B. Storm Water Pollution Prevention Plan (SWPPP) [Part II Section A of Permit]		
SWPPP Developed and Onsite? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Incomplete <input type="checkbox"/> Not Updated as Needed		
Comments: <u>Permittee has not developed a SWPPP</u>		
Are Stabilization Practices Satisfactory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA		
Comments: <u>No stabilization implemented</u>		
Are erosion controls Satisfactory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA		
Comments: <u>No Controls</u>		
Evidence of sediment leaving the site? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA		
Comments: <u>There has been a significant amount of sediment leave this site due to the washout of the overflow area of the embankment. (see attached photos)</u>		
Evidence of off-site tracking? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA		
Comments:		
Evidence of sediment entering the Waters of the State? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Likely <input type="checkbox"/> No <input type="checkbox"/> NA		
Comments:		
Are inspections conducted and records kept as required in the permit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA		
Comments:		
Is corrective action taken based on results of inspections? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA		
Comments:		
Are daily rainfall totals recorded? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA		
Rainfall measured using: <input type="checkbox"/> On-site Rain Gauge <input checked="" type="checkbox"/> NA <input type="checkbox"/> Other:		
Comments:		
General Comments: <u>Mr. Smith was made aware of the permit requirements by Garland County's MS4 inspector (Tommy Kerr). There doesn't appear to be any application of this permit, nor the MS4's. Currently Mr. Smith is under a cease and desist order by the U.S. Army Corps of Engineers and Garland County's MS4.</u>		

Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	1	Of	12		Date:	8/1/08	Time:	1110
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Description:	Photo of the earthen embankment constructed by Mr. Smith						
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	2	Of	12		Date:	8/1/08	Time:	1111
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Description:	Area of the embankment that washed out						
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Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	3	Of	12	Date:	8/1/08	Time:	1111
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Description:	Close-up of the washed out embankment						
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A intermittent tributary flows thru here



Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	4	Of	12	Date:	8/1/08	Time:	1146
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Description:	Photo of the sediment deposited into Kelly Creek						
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Kelly Creek



Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	5	Of	12		Date:	8/1/08	Time:	1146
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Description:	Sediment deposited into Kelly Creek						
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	6	Of	12		Date:	8/1/08	Time:	1147
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Description:	The back side of the embankments (no stabilization)						
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Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	7	Of	12	Date:	8/1/08	Time:	1148
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Description:	Sediment in Kelly Creek						
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	8	Of	12	Date:	8/1/08	Time:	1148
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Description:	Sediment in Kelly Creek (Photos taken as I walk down Kelly Creek.)						
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Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain			Witness:	Tommy Kerr		
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Photo #	9	Of	12	Date:	8/1/08	Time:	1150
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Description:	Sediment in Kelly Creek (Photos taken as I walk down Kelly Creek.)						
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Photographer:	Jim McSwain			Witness:	Tommy Kerr		
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Photo #	10	Of	12	Date:	8/1/08	Time:	1152
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Description:	Photo taken from Kelly Creek looking back towards the embankment (in the background)						
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Water Division Construction Storm Water Photographic Evidence Sheet							
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Location:							
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Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	11	Of	12	Date:	8/1/08	Time:	1153
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Description:	Photo taken from Kelly Creek looking back down the backside of the embankment						
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Outfall from the overflow structure seen in photo 1

Photographer:	Jim McSwain	Witness:	Tommy Kerr			
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Photo #	12	Of	12	Date:	8/1/08	Time:	1156
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Description:	Standing on the embankment. Overall view of the lake. The inflow from Kelly Cr. In the background.						
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