

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**Jerry Ott
110 Club House Lane
Bull Shoals, AR 72619
Marion County, Arkansas**

**LIS NO. 08-093
AFIN 45-00225**

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (hereinafter "Order") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; Ark. Code Ann. '8-4-101 et seq.) and the regulations issued thereunder (hereinafter collectively referred to as "the Act").

Pursuant to the authority of Ark. Code Ann. §8-4-207(1)(B), the Director for the Arkansas Department of Environmental Quality (hereinafter ADEQ) is authorized to set schedules of compliance for facilities permitted under the Act necessary to assure compliance with both applicable state and federal effluent limitations, including, but not limited to, those mandated by the National Pollutant Discharge Elimination System Program (hereinafter "NPDES") under section 402 of the Federal Water Pollution Control Act, 33 U.S.C. §1342 as well as under sections 301, 318, and 405 of the Federal Water Pollution Control Act, 33 U.S.C. §1311, 33 U.S.C. §1328 and 33 U.S.C. §1345; and Arkansas Pollution Control and Ecology Commission Regulations 2, 6, 7 & 8.

The issues herein having been settled by the agreement of Jerry Ott – The Bluffs at Rivercliff (hereinafter the "Permittee") and ADEQ, it is hereby agreed and stipulated that the following **FINDINGS OF FACT** and **ORDER AND AGREEMENT** be entered herein.

FINDINGS OF FACT

1. Jerry Ott (hereinafter "Permittee") operates The Bluffs at Rivercliff, a construction site in Marion County, Arkansas. The site is approximately 20 acres and requires a NPDES Large Site Stormwater Construction General Permit.
2. On February 19, 2007, an inspection was conducted by an ADEQ Water Division Field Inspector. The construction site was posted as a Small Site. The inspection revealed the following violations:
 - a. The Storm Water Pollution Prevention Plan (SWPPP) was not being updated as required by Part II, Section A and Part II, Section A, Paragraph 3 of the Permit; and
 - b. Erosion and sediment control measures were either not installed, were improperly installed, or were not adequately maintained as required by Part I, Section C, Paragraph 3(a), and Part II, Section A, Paragraph 4(b) of the Permit.
3. Notice of the Inspection was sent to the Permittee on March 15, 2007, with a response requested by April 3, 2007. The response received was deemed adequate.

4. On July 9, 2007, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the site is greater than 5 acres and must have a Stormwater Construction General Permit for a Large Site. There is an estimated 15 acres or more of disturbed area on steep slopes. The property must be permitted as a large construction site as required in A.C.A. § 8-4-217(b)(1). In addition, sediment from the construction site was observed to have been discharged to an unnamed tributary of the White River. This is in violation of A.C.A. §8-4-217(a)(2). The following deficiencies were also noted:

- a. There were inadequate erosion and sediment control measures on the site to prevent sediment from entering waters of the state;
- b. Disturbed areas of the site must be stabilized within 14 days after construction activity in the area has temporarily or permanently ceased. Several acres of disturbed steep hillside had been allowed to erode for months on the site;
- c. Sediment control measures on the site are not being maintained. The only sediment control on the site, the silt fence on the east side, was degraded and ineffective; and
- d. The Storm Water Pollution Prevention Plan (SWPPP) was not being updated. If best management practices are not functioning, additional erosion control measures must be implemented and the SWPPP appropriately revised.

5. Notice of the inspection was sent to the Permittee on July 23, 2007, with a response requested by August 13, 2007. The response was received August 9, 2007, indicating corrective action would be done. Those measures would include hiring a consulting firm to update the SWPPP and file proper documentation to obtain the Large Site Stormwater Construction General Permit; upgrading and maintaining BMPs to eliminate discharge from the site; installing additional control measures to satisfy requirements of the Permit; stabilizing areas of the site where construction activity had ceased; repairing or replacing silt fencing as needed; and revising and updating the SWPPP. The response was inadequate because there was no documented proof, such as photographs of site control measures being installed or repaired, that would show corrective action was actually taking place.

6. On August 7, 2007, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following deficiencies:

- a. The site is greater than 5 acres and must have a Large Site Stormwater Construction General Permit. There is an estimated 15 acres or more of disturbed area on steep slopes. The property must be permitted as a large construction site as required in A.C.A. § 8-4-217(b)(1)(E). In addition, sediment from the construction site was observed to have been discharged to an unnamed tributary of the White River. This is in violation of A.C.A. §8-4-217(a)(2). The following deficiencies were also noted:
- b. There were inadequate erosion and sediment control measures on the site to prevent sediment from entering waters of the state;

- c. Disturbed areas of the site must be stabilized within 14 days after construction activity in the area has temporarily or permanently ceased. Several acres of disturbed steep hillside had been allowed to erode for months on the site;
- d. Sediment control measures on the site are not being maintained. The only sediment control on the site, the silt fence on the east side, was degraded and ineffective; and
- e. The Storm Water Pollution Prevention Plan (SWPPP) was not being updated as required. If best management practices are not functioning, additional erosion control measures must be implemented and the SWPPP appropriately revised.

7. Notice of the inspection was sent to the Permittee on August 7, 2007, with a response requested by August 30, 2007. The response received was deemed inadequate due to a lack of verifiable documentation, such as photographs indicating corrective measures had been taken. A compliance assistance visit was conducted on August 14, 2007. A comprehensive response to all inspections was given to ADEQ staff during a site visit on September 7, 2007. Photographic evidence showed corrective measures had been taken. The site visit confirmed the evidence. It appeared the Permittee was meeting goals of the stormwater program requirements. A construction stormwater permit was issued on November 20, 2007.

8. On December 19, 2007, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following violations:

- a. Ineffective perimeter controls were observed at two locations, in violation of Part II, Section A, Paragraph 4(b) of the Permit;
- b. Disturbed soils which had not been stabilized as required by Part II, Section A, Paragraph 4(b)(i)(A) of the Permit were observed along the gravel road which runs through the site just downhill of and approximately parallel to the uppermost gravel road which runs through the site.

9. On January 9, 2008, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following violations:

- a. Ineffective perimeter controls were observed at two locations, in violation of Part II, Section A, Paragraph 4(b) of the Permit;
- b. Disturbed soils which had not been stabilized as required by Part II, Section A, Paragraph 4(b)(i)(A) of the Permit were observed along the gravel road which runs through the site just downhill of and approximately parallel to the uppermost gravel road which runs through the site.

10. Notice of the inspections was sent to the Permittee on January 29, 2008, with a response requested by February 21, 2008. A written response was received by the Department on February 21, 2008 stating that all perimeter controls have been repaired or replaced. All accumulated silt behind the silt fences has been removed and taken off site. The gravel road running through the site has been temporarily stabilized with

anchored hay bales. The road is subject to the City of Bull Shoals' approval of a temporary plat to subdivide the posted site. As soon as this plat is approved, the road will be realigned to its final route and the roadbed will be stabilized with gravel. The banks above and below the road will be stabilized with large boulders and will be hydro seeded with grass. The response also stated that all inspections required by the permit have been performed in a timely manner, and despite heavy rainfall, there has been little evidence of any silt leaving the posted site. No photographic evidence was submitted to substantiate corrective actions; therefore the response was inadequate .

11. A.C.A. §8-4-217(a)(2) states that it shall be unlawful to place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state; and A.C.A. §8-4-217(a)(3) states that it shall be unlawful for a person to violate any provision of a Permit issued under this chapter by ADEQ. Therefore, as a result of the foregoing violations committed by the Permittee, the following actions are proposed to be ordered herein pursuant to A.C.A §8-4-103(b).

ORDER AND AGREEMENT

Therefore, the parties do hereby stipulate and agree that:

1. Within thirty (30) days of the effective date of this Order, the Permittee shall submit to ADEQ a comprehensive Corrective Action Report which shall detail the steps the Permittee took to achieve full compliance with the Arkansas Water and Air Pollution Control Act at this construction site. This Report shall demonstrate how the Permittee addressed the violations and deficiencies listed in the findings of fact of this order and

shall, at a minimum, include a copy of the updated Storm Water Pollution Prevention Plan (SWPPP) including a site map indicating where runoff controls were placed and photo documentation of site runoff controls. The corrective action report shall be signed in accordance with Part II, Section B, Paragraphs 9 and 10 of the Permit and mailed to the attention of:

Arkansas Department of Environmental Quality
Water Division
Enforcement Section
5301 Northshore Dr.
North Little Rock, AR 72118

2. The Permittee shall provide an affidavit to each new owner of one or more lots within each of the construction sites stating the requirements of the NPDES General Storm Water Permit. This affidavit shall be signed by the new owner, and the Permittee shall submit the originally signed document to the Department within ten (10) days of closure of the sale. No owner, builder, or contractor shall begin construction on any lot without first having signed the affidavit. The affidavit must state the following, "I, _____, operator of a small individual lot, certify under penalty of law that I was notified by the operator of the larger common plan of the storm water permitting requirements for my construction site(s). Additionally; I understand prior to commencement of any construction activity I have to prepare and comply with a SWPPP and post the Small Construction Site Notice."

3. For lots that have already been sold but not fully developed and stabilized, the Permittee shall send to the owner of the lot(s) a letter by certified mail informing the owner that the lot is part of a larger development subject to the requirements of the

NPDES General Stormwater Permit. The letter shall notify the lot owner, that they are responsible for compliance with the stormwater regulations including but not limited to posting the lot with the small construction site notice, developing and implementing a stormwater pollution prevention plan, inspecting all erosion control measures, maintaining the appropriate records at the construction site, and stabilizing the site upon completion of soil disturbing activities. The letter shall include a carbon copy to ADEQ, Enforcement Section, and shall be submitted to the Department within ten (10) days of the effective date of this Order. The Permittee shall keep a copy of the certified mail receipt on file for a period of three (3) years after the termination of the permit for this construction site and shall make a copy of the certified mail receipt available to ADEQ upon request by ADEQ.

4. In compromise and full settlement of the civil penalties for violations (specified in the Findings of Fact), the Permittee agrees to pay to ADEQ the total sum of Nine Thousand Eight Hundred Fifty Dollars (\$9,850.00) as a voluntary civil penalty. Payment of the penalty shall be made in eighteen (18) monthly installments of seventeen (17) installments of Five Hundred Fifty Dollars (\$550.00) and one final installment of Five Hundred Dollars (\$500.00). The first installment payment shall be made within thirty (30) days after publication and on the same date of the following seventeen (17) months. Payment shall be made payable to the Arkansas Department of Environmental Quality and mailed to the attention of:

Arkansas Department of Environmental Quality
The Fiscal Division,
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

5. All submittals required by this Order are subject to approval by ADEQ. In the event of any deficiency, the Permittee shall within fifteen (15) days of notification by ADEQ submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) days constitutes a failure to meet a deadline and is subject to the civil penalties established in paragraph 6 below.

6. Failure to meet the requirements of this Order including failure to respond by the time limits contained herein constitutes a violation of said Order. If the Permittee should fail to meet any such requirements or deadlines, the Permittee consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

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|----|---|------------------|
| a. | First day through the tenth day: | \$100.00 per day |
| b. | Eleventh day through the twentieth day: | \$200.00 per day |
| c. | Twenty-first day through thirtieth day: | \$300.00 per day |
| d. | Each day beyond the thirtieth day: | \$500.00 per day |

These stipulated penalties for delays in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of the Permittee's failure to comply with the requirements of this Order.

7. If any event, including but not limited to an act of nature, occurs which causes or may cause a delay in the achievement of compliance by the Permittee with the requirements or deadlines of this Order, the Permittee shall so notify ADEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified herein. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being

taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

8. ADEQ may grant an extension of any provision of this Order, provided that the Permittee requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of the Permittee. The time for performance may be extended for a reasonable period but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of the Permittee and the length of the delay attributable to such circumstances shall rest with the Permittee. Failure to notify the ADEQ promptly, as provided in paragraph 7 of this section, shall be grounds for a denial of an extension.

9. This Order is subject to public review and comment in accordance with A.C.A. '84-103 (d) and Arkansas Pollution Control and Ecology Commission Regulation No. 8 and shall not be final until thirty (30) days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance with the terms of the permit shall be taken immediately.

10. As provided by Arkansas Pollution Control and Ecology Commission Regulation No. 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

11. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate the Permittee from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Permittee of its responsibilities for obtaining any necessary permits.

SO ORDERED THE 6th DAY OF August, 2008

Teresa Marks
Teresa Marks, Director

APPROVED AS TO FORM AND CONTENT:

BY: K Ott
(Signature)

Larry K Ott
(Typed or printed name)

TITLE: Owner
(Typed or printed title)

DATE: 8/1/08