

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**Arkansas Reclamation Company, LLC
White County**

**LIS NO. 08-084
AFIN73-00785**

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 Arkansas Reclamation Company, LLC (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. Arkansas Reclamation Company, LLC is located in White County, Arkansas. The Permittee operates a drill cuttings reclamation business pursuant to the conditions of NPDES General Permit for Operators of Facilities Discharging Storm Water Associated with Industrial Activity Located in the State of Arkansas - ARR000290, and NPDES Permit for Owners or Operators of Facilities Discharging Storm Water Associated with Construction Activity - ARR152346 (hereinafter "the Permit") issued by the authority of ADEQ. In addition, the Permittee operates the business pursuant to the conditions of the NPDES General Permit for Petroleum Storage and Transfer (PST) Facilities — ARG340085 and a No Discharge Storage Pond Permit 5006-W.

2. On January 30, 2008, a compliance inspection was conducted by an ADEQ Water Division Field Inspector. The portion of the inspection pertaining to Permit ARR000290 revealed the following violations:

- a. The Storm Water Pollution Prevention Plan ("SWPPP") was not being updated as required by Part III, Section A, Paragraph 3 of th^e Permit. Specifically a large oil based cuttings pile was noted on site. This was not identified in the plan;
- b. Good housekeeping procedures and spill response procedures were not occurring as per the SWPPP, in violation of Part III, Section A, Paragraph 4(c)(i) and 4(c)(iii) or the Permit;
- c. The containment berm around the cuttings pile was inadequate. Oil from the cuttings had passed over the berm and onto the ground around the pile. This is a violation of Part III, Section B, Paragraph 16(a) of the Permit.

3. The portion of the inspection pertaining to Permit ARR152346 revealed the following violations:

- a. Sediment and Erosion control measures were not adequately maintained as required by Part II, Section A, Paragraph 4(b)(i) of the Permit;
- b. Site inspections were not being performed as required by Part II, Section A, Paragraph 4(e) of the Permit. The last inspection was performed in September 2007;
- c. The site was not posted as required, in violation of Part I, Section B, Paragraph 7 (e) of the Permit;

4. The portion of the inspection pertaining to Permit ARG340085 revealed the berm, located around the tanks, is earthen. The berm has been partially displaced/Crushed on the south side, which would make the berm ineffective in the case of a spill. This is a violation of Part II, Section B(1)(a) of the Permit.

5. The portion of the inspection pertaining to Permit 5006-W revealed the following violations:

- a. The waste storage system was constructed prior to authorization from the Department. The Permit was not effective until March 1, 2008. This is a violation of Part 1(9) of the Permit. In addition, the waste storage system was not constructed, operated, nor maintained in accordance with the Waste Management Plan. This is a violation of Part 1(3) of the Permit;
- b. Oil from stockpiled oil based cuttings was discharged onto the land. This is a violation of Part 1(2) of the Permit. Additionally, the release of oil onto the ground was not reported as required, in violation of Part 1(7) of the Permit.

6. Notice of the Inspection was sent to the Permittee on February 4, 2008, with a written response requested by February 25, 2008. A response dated February 18, 2008 was received from the Permittee. The response addressed the violations noted for each individual Permit as follows:

- a. Permit ARR000290 — Good housekeeping and spill response procedures are being implemented per the Permit. The SWPPP has been amended to include the cuttings pile located on the southern portion of the property. The berm around the cuttings pile has been raised to ensure no leakage of stormwater from within the berm and an appropriate management plan has been implemented. The management plan includes regular inspection of the cutting pile. Water which collects in the berm is pumped onto frac tanks which have been staged on the north side of the cuttings pile. Hay bales have also been installed around the perimeter of the down gradient area of the pile. Oil which escaped the berm surrounding the cuttings pile has been removed and all impacted soils excavated and properly disposed of offsite.
- b. Permit ARR152346 — Onsite sediment and erosion controls (i.e. hay bales and silt fences) have been repaired and/or replaced as necessary. Inspections are being performed in accordance with the permit. Documentation of the permit has been placed inside the office. The Permittee will establish vegetative cover within the drainage areas so that Permit ARR152346 can be terminated as soon as reasonably practical.
- c. Permit ARG340085 — The tanks on the north side of the plant are temporary. These tanks are to be cleaned as soon as practical and removed from the site. The earthen berm will remain in place for the near future around tanks on the south

side of the plant. Site improvements will include a more permanent concrete masonry unit block wall around the tanks. The damaged berm on the south side has been repaired.

- d. Permit 5006-W — The spill around the cuttings pile has been properly remediated and all oil and stained soil removed and disposed of offsite. A waste management plan has been set out in the SWPPP. The spill has been documented in the SWPPP. The Permittee also stated that during a meeting with ADEO staff, Ms. Cara Hill and Mr. Marcus Tilley, on February 11, 2008, it was indicated that the cuttings pile should be covered under the General Industrial Storm Water Permit ARR000290 currently in place for the facility. The cuttings pile consists of an approximate one-quarter acre area that is surrounded by an earthen berm. Beneath the cutting pile is a 40 mil liner located beneath 18 inches of bedding material. The pile has been covered with 6 mil plastic. The cuttings pile is isolated from stormwater run-on and runoff. The cuttings pile has been added to the Stormwater Pollution Prevention Plan (SWPPP) required pursuant to Permit ARR000290 and will be properly maintained in accordance with the plan. This will include regular inspection of the pile and berm area. Any excess liquids which collect within the berm will be removed and placed into frac tanks which have been staged on the north side of the berm. Once the thermal desorber is in operation at the facility, soil from the cuttings pile will be processed through the desorber on regular basis until the pile is gone. Once the pile is completely processed, the cuttings pile area will be closed.

7. 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 §'8-4-4103(b).

8. Without admitting or denying the foregoing Findings of Fact and the truth or falsity of any allegations or issues currently in dispute, the Permittee and the ADEQ wish to avoid the costs and uncertainty that would be involved in litigating this matter and agree to settle and resolve the questions at issue by entering into this Order.

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 Drive
North Little Rock, Arkansas 72118

2. Is it acknowledged by the Permittee and ADEQ that the Permittee has already taken and completed certain actions as described in the July 3, 2008 letter from ADEQ to Arkansas Reclamation titled "Response to Inspection."

3. 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 Four Hundred Dollars (\$9,400.00) as a voluntary civil penalty. Payment of the penalty shall be made within thirty (30) days of the effective date of this Order, made payable to the Arkansas Department of Environmental Quality and mailed to the attention of:

Arkansas Department of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, Arkansas 72118.

4. 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 5 below.

5. 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.

6. 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.

7. 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 5 of this section, shall be grounds for a denial of an extension.

8. This Order is subject to public review and comment in accordance with A.C.A. §8-4-103 (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.

9. 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.

10. 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.

11. Nothing in this Order shall be deemed an admission by any party, and the terms of this Order shall not be admissible in any proceeding against either party without their consent unless the proceeding is one to enforce the terms and conditions of this Order itself.

12. This Order shall constitute the entire agreement of the parties and is a full resolution and satisfaction of all violations that are alleged in this Order.

SO ORDERED THE 28th DAY OF July, 2008
Teresa Marks
Teresa Marks, Director

APPROVED AS TO FORM AND CONTENT:

BY: Thomas P. Jones
(Signature)

Thomas P. Jones
(Typed or printed name)

TITLE: V.P.
(Typed or printed title)

DATE: 7/24/08