

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**MR. DOUG LOFTIN, INDIVIDUALLY AND AS MANAGING PARTNER OF HOMETEX,  
LLC – LOFTIN PROPERTIES**

**SALINE COUNTY**

**LIS NO. 07-026  
AFIN 63-00820**

**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 Mr. Doug Loftin, individually and as Managing Partner of Hometex, LLC – Loftin Properties (hereinafter the "Permittee") and ADEQ, it is hereby agreed and stipulated that the following **FINDINGS OF FACT** and **ORDER AND AGREEMENT** be entered herein.

Notwithstanding, the Permittee's entry into this Order, the Permittee does not admit ADEQ's Findings of Fact contained in this Order. The Permittee agrees to enter into this compromise and settlement solely to avoid incurring any further cost or expense arising as a result of this dispute. Without any admission of liability, the Permittee consents to enter into this order resolving matters addressed in this Consent Order.

#### **FINDINGS OF FACT**

1. Mr. Doug Loftin, individually and as Managing Partner of Hometex, LLC – Loftin Properties is located in Saline County, Arkansas. The Permittee operates a construction site of approximately 668 acres pursuant to the conditions of NPDES General Permit for Facilities Discharging Storm Water Associated with Construction Activity Located in the State of Arkansas - ARR151435 (hereinafter "the Permit") issued by the authority of ADEQ.
2. On December 20, 2005, ADEQ notified Mr. Doug Loftin, individually and as Managing Partner of Hometex, LLC – Loftin Properties that the Stormwater Pollution Prevention Plan (SWPPP) that was submitted on December 6, 2005 was allegedly deficient. The letter included a completeness checklist and required the Permittee to submit an updated SWPPP by January 6, 2006. The Permittee allegedly failed to submit an adequate SWPPP as required by the December 20, 2005 letter. Part II, Section B, Paragraph 7 of the Permit, Duty to Provide Information states "the owner or operator shall

furnish to the Director, an authorized representative of the Director, the EPA, a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, within a reasonable time, any information which is requested to determine compliance with this permit.”

3. On March 22, 2006, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following alleged violations:

- a. Erosion control measures (ECMs) were allegedly not installed, improperly installed, or not adequately maintained as required by Part I, Section C, Paragraph 3(a), and Part II, Section A, Paragraph 4(b) of the permit. Specifically, the inspector alleged unprotected storm drain drop inlets, hay bales not properly installed, and silt fences that were down and required maintenance;
- b. The site was allegedly not properly posted in violation of Part I, Section B, Paragraph 7 (e) of the Permit;
- c. The inspector alleged the site had last been inspected by the Permittee on March 13, 2006 or nine (9) days since it was last inspected. The allegedly deficient SWPPP submitted by the Permittee indicated that inspections would be conducted every seven (7) days. The section of the SWPPP concerning inspections was not one of the allegedly deficient areas of the SWPPP. Part II, Section A of the permit requires the Permittee to implement the provisions of the SWPPP.
- d. There was allegedly evidence of storm water sediment discharge to waters of the state (Otter Creek and its tributaries) in violation of A.C.A. §8-4-217(a)(2).

4. On April 25, 2006, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following alleged violations:

a. Erosion control measures (ECMs) were allegedly improperly installed, or not adequately maintained as required by Part I, Section C, Paragraph 3(a), and Part II, Section A, Paragraph 4(b) of the permit. Specifically, the inspector alleged silt fences were not trenched in allowing for sediment to run under them, silt fences were overtopped, and silt fences were down or washed out.

b. There was allegedly evidence of storm water sediment discharge to waters of the state (Otter Creek and its tributaries) in violation of A.C.A. §8-4-217(a)(2).

c. Process water, specifically, concrete rinsate was allegedly being discharged to the waters of the state in violation of Part I(3)b of the permit and A.C.A. §8-4-217(a)(2).

5. 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  
NPDES Enforcement Section  
P. O. Box 8913  
Little Rock, AR 72219-8913

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, NPDES 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 Eighteen Thousand Dollars (\$18,000.00) as a voluntary civil penalty. In lieu of the \$18,000 voluntary civil penalty, the Permittee shall perform a Supplement Environmental Project (SEP). The SEP, which will be conducted in conjunction with an agreement with Loftin Construction shall be to extend sewer service to the property line of the Pawnee Village POA within twelve (12) months of the effective date of this order. If the Permittee should fail to extend sewer service to the Pawnee Village POA within twelve (12) months, then the full civil penalty must be made within two (2) weeks of demand by ADEQ. Failure to make the penalty payment upon demand shall be subject to the stipulated penalties in paragraph 7 below. Payment of the penalty 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,  
P.O. Box 8913  
Little Rock, Arkansas 72219-8913.

5. Notwithstanding the inspections set forth above, the ADEQ and the Permittee agree that for purposes of A.C.A. § 8-1-106 and APC&EC Regulation No. 8, Section 2.1.18, the inspections and the Findings of Fact of this Consent Administrative Order shall be considered one and the same, i.e. a single event, as the construction activity continued at the same site and despite various time intervals referenced above.

6. 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 7 below.

7. 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:

- |    |   |                  |
|----|---|------------------|
| 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.

8. 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.

9. 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 8 of this section, shall be grounds for a denial of an extension.

10. 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.



11. 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.

12. 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 17<sup>th</sup> DAY OF March, 2007

Teresa Marks  
Teresa Marks, Director

APPROVED AS TO FORM AND CONTENT:

BY: Douglas W. Hottel Jr.  
(Signature)  
Douglas W. Hottel Jr. (JR)  
(Typed or printed name)

TITLE: Developer  
(Typed or printed title)

DATE: 3-9-07