

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

MMSC, LLC dba Heritage Farms NWA
908 South Old Missouri Road
Springdale, AR 72764

LIS No. 19- 096
Permit No. Not Permitted
AFIN 72-00952

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“the Act”), Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules and regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the MMSC, LLC dba Heritage Farms NWA (“Respondent”) and the Division of Environmental Quality¹ (DEQ or “Division”), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates an open cut and topsoil mine (“Facility”) located at 14601 Viney Grove Road, Fayetteville, Washington County, Arkansas.
2. Respondent discharges stormwater to an unnamed tributary of the Muddy Fork of the Illinois River, thence to the Illinois River, thence to Segment 3J of the Arkansas River Basin.
3. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

§ 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000 or an individual permit.

4. Respondent is classified as SIC code 1442 Construction Sand and Gravel and NAICS code 21232 Sand, Gravel, Clay, and Ceramic and Refractory Minerals Mining and Quarrying.

5. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

6. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) et seq., the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

7. DEQ is authorized under the Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

8. Ark. Code Ann. § 8-4-217(a)(3) provides

(a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

9. Ark. Code Ann. §§ 8-4-217(b)(1)(C) and (E) provides

(b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of

which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

10. Ark. Code Ann. § 8-4-103 authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

11. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

12. On March 1, 2018, a Division Inspector conducted a complaint investigation of Respondent’s Facility. The inspection revealed the following violations:

a. Respondent was operating an open-cut mine site without a permit for the discharge of stormwater associated with industrial activity. This condition is a violation of 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 6.104, and Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore is a violation of Ark Code Ann. § 8-4-217(a)(3).

b. Respondent discharged stormwater associated with industrial activity into the Muddy Fork of the Illinois River. This condition violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

13. On March 1, 2018, by phone, and on April 24, 2018, by letter, the Division notified Respondent of the inspection results.

14. On May 9, 2018, the Division received Respondent's response to the violation noted in the complaint investigation.

15. On May 22, 2018, the Division notified Respondent that the May 9, 2018 response to the complaint investigation was inadequate and requested a written response to the cited violations by June 12, 2018. On June 28, 2018, Respondent submitted a Notice of Intent as its response to the violation. The Notice of Intent (NOI) was not signed, did not include a Stormwater Pollution Prevention Plan (SWPPP), and did not include the required fee.

16. On July 5, 2018, the Division transferred Permit 0559-MN to Respondent with new Permit Number 0559-MN-A3, which permits Respondent to engage in open-cut mining at this Facility. Permit 0559-MN-A3 became effective July 5, 2018, and expires on July 4, 2023.

17. On August 21, 2018, a Division Inspector conducted a routine inspection of Respondent's Facility. The inspection revealed the following violations:

- a. Respondent was operating an open-cut mining site without a permit for the discharge of stormwater associated with industrial activity. This condition is a violation of 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 6.104, and Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore is a violation of Ark Code Ann. § 8-4-217(a)(3).

18. On September 4, 2018, DEQ sent Respondent the inspection results from the August 21, 2018 inspection.

19. On November 27, 2018, the Division contacted Respondent and Respondent advised that a NOI and SWPPP were being submitted. On November 29, 2018, DEQ received a NOI, SWPPP, and permit fee for the Facility.

20. On January 2, 2019, the Division requested a meeting with Respondent. On January 10, 2019, DEQ and Respondent met at Division Headquarters in North Little Rock.
21. On January 14, 2019, DEQ received the correct NOI with a SWPPP from Respondent for coverage under the ARR1500000 Industrial Stormwater General Permit (IGP).
22. On March 27, 2019, the Division notified Respondent that coverage under the IGP is not appropriate for this Facility, and in accordance with Parts 1.8.7 and 1.8.8 of the IGP, DEQ may consider permitting this Facility through an individual NPDES permit to cover the proposed discharges.
23. To date, Respondent has not submitted an application for an individual NPDES permit for this Facility.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall cease open-cut mining activities at the Facility until such time as Respondent has obtained all appropriate permits from the Division in accordance with Open-Cut Mining Permit 0559-MN-A3 and 40 C.F.R. § 122.26(c), as adopted by APC&EC Regulation No. 6.104.
2. Respondent shall, within thirty (30) days of the effective date of this Order, submit to the Division for review and approval a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer (PE) licensed in the State of Arkansas to correct the violations referenced in the Findings of Fact and to stabilize the Facility. The CAP shall at minimum include:
 - a. Best Management Practices (BMP) and technologies to be used to:
 - i. Prevent sediment or other wastes from leaving the Facility;
 - ii. Stabilize the previously disturbed areas;
 - iii. Stabilize any and all material stockpiles; and

- iv. Plan for ongoing inspection, maintenance, and repair of the BMPs; and
 - b. A reasonable milestone schedule with a date of final compliance.
3. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of the approved CAP. The approved CAP, milestone schedule, and date of final compliance shall be fully enforceable as terms of this Order.
4. Respondent shall submit monthly progress reports including photographic evidence that details the work completed from the approved CAP until such time that Respondent obtains the appropriate permit for the Facility or the Facility is fully remediated. The first report shall be due within thirty (30) calendar days of DEQ's written approval of the CAP. All subsequent reports shall be due on the 15th of the following month.
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Six Thousand Dollars (\$6,000.00), or one-half of the full civil penalty of Three Thousand Dollars (\$3,000.00) if this Order is signed and returned to the Office of Water Quality, Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

6. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to DEQ by reason of failure by Respondent 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 Respondent with the requirements or deadlines of this Order, Respondent shall so notify DEQ, 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 in this Order. 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. DEQ may grant an extension of any provision of this Order, provided that Respondent 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 Respondent. 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 Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ

promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ 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 shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC 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 DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

12. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the

terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 9th DAY OF October, 2019.

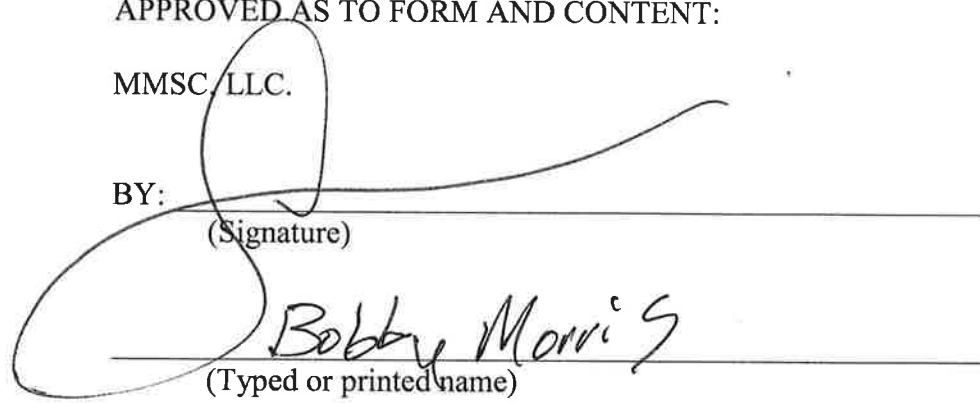


BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

MMSC, LLC.

BY:



(Signature)

Bobby Morris

(Typed or printed name)

TITLE:

Owner

DATE:

10/1/19
