

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Riggins Commercial Construction, LLC
1204 E. Joyce Blvd Ste. 102
Fayetteville, AR 72703

LIS No. 20- 120
Permit No. ARR155919
AFIN 72-02373

CONSENT ADMINISTRATIVE ORDER

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

The issues herein having been settled by the agreement of Riggins Commercial Construction, LLC (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 a construction site (“site”) located on the Northwest side of the intersection of US Highway 45 East and Blue Springs Road, Goshen, Washington County, Arkansas.
2. According to the Notice of Intent prepared by Respondent and submitted to DEQ, the site is approximately 169 acres with an estimated 27 acres to be disturbed.

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.

3. Respondent discharges stormwater associated with construction activity to an unnamed drainage ditch, thence to the White River.

4. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES). DEQ issued Stormwater Construction General Permit, Permit Number ARR150000, on May 4, 2016, with an effective date of November 1, 2016, and an expiration date of October 31, 2021.

5. 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).

6. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

7. On April 13, 2018, DEQ granted Respondent coverage under General Permit Number ARR150000 by issuing NPDES General Permit Tracking Number ARR155919 (“Permit”) to Respondent with an effective date of April 13, 2018, and an expiration date of October 31, 2021.

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. § 8-4-103(c)(1)(A) 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 regulation or permit issued pursuant to the Act.

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

11. On January 8, 2019, DEQ conducted a Stormwater Construction Inspection of the site. The inspection revealed the following violations:

- a. Proper site stabilization practices have not been implemented and maintained at north road, the concrete trail system, west road, or southwest road to cul-de-sac to minimize the discharge of pollutants. These conditions are a violation Part II, Section A.4.G of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Evidence that construction equipment had crossed a flowing creek without a Short Term Activity Authorization first being issued by the DEQ. This is a violation of Part I, Section B.12 of the permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent has not properly operated and maintained the site as required by the Permit. The following conditions are a violation of Part II, Section B.17 of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3):
 - i. Silt fences and check dams were not properly installed and maintained at the site: silt fencing was not in place at North Road; the eastern most check dam has sediment at over fifty percent (50%) capacity; silt fences were in disrepair at the concrete trail system; silt fencing was not in place

at west road as indicated on site map and the rock check dam was washed out; and the southwest road to the cul-de-sac dam check was washed out. These conditions are a violation Part II, Section A.4.G of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- ii. The SWPPP was not kept up-to-date to reflect current conditions at the site. This condition is a violation of Part II, Section A.3 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- iii. Inspections have not been conducted in accordance with the frequency set out in the SWPPP. This condition is a violation of Part II, Section A.4.L of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- iv. Inlet protection has not been installed at north road, west road, or southwest road to cul-de-sac. These conditions are a violation Part II, Section A.4.G of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On January 31, 2019, DEQ notified Respondent of the inspection results and requested a written response with documentation describing the course of action taken to correct each violation noted in the inspection report be submitted to DEQ by February 20, 2019.

13. On March 19, 2019, DEQ notified Respondent, via certified mail, of the inspection results and requested a written response with documentation describing the course of action taken to correct each violation noted in the inspection report be submitted to DEQ by April 2, 2019.

14. To date, DEQ has not received a response addressing the actions taken by Respondent to correct violations identified during the inspection.

15. On April 1, 2019, DEQ invoiced Respondent for the annual Stormwater Construction Permit fee of Two Hundred Dollars (\$200.00), and on June 7, 2019, DEQ assessed a late charge of Twenty Dollars (\$20.00). The total amount due for invoice PDS-174047 is Two Hundred Twenty Dollars (\$220.00).

16. To date, Respondent has not paid invoice PDS-174047.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply immediately with the terms and conditions of the Permit.
2. On or before the effective date of this Order, Respondent shall remit payment to DEQ for invoice PDS-174047.
3. Respondent shall, on or before the effective date of this Order, submit to DEQ a revised Stormwater Pollution Prevention Plan (SWPPP).
4. Respondent shall obtain a Short Term Activity Authorization from DEQ before performing any in-stream activities.
5. Respondent shall submit quarterly progress reports to DEQ to begin within sixty (60) calendar days of the effective date of this Order, and thence quarterly thereafter. Each quarterly progress report shall document the actions taken to ensure that silt and sediment are not leaving the site and include copies of the site inspection reports and photographs documenting BMPs. The quarterly progress reports shall be submitted to DEQ until the project is either complete or Permit coverage has been terminated and the site has the appropriate 80% documented ground cover, whichever is first.
6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Eight Hundred Fifty Dollars (\$5850.00), or one-half of the full civil penalty of Two Thousand Nine Hundred Twenty-Five

Dollars (\$2925.00) 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:

DEQ, 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.

5. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to 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

6. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to 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 that 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, 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 if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify 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 respond adequately 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 (30)-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 which 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 12 DAY OF February, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Riggins Commercial Construction, LLC

BY: [Signature]
(Signature)

Kevin Riggins
(Typed or printed name)

TITLE: Member

DATE: Feb 4 2020