

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Moses Plumbing, LLC
P.O. Box 7267
Van Buren, AR 72947

LIS No. 20- 202
Permit Tracking No. ARR156646
AFIN 17-01466

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (“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 issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Moses Plumbing, LLC (Respondent) and the Division of Environmental Quality¹ (DEQ), 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 large pond/borrow area construction site (“Site”) located off 4756 Kibler Road in Van Buren, Crawford County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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. 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).

4. 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.

5. 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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

6. 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 rule or permit issued pursuant to the Act.

7. 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.”

8. 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.

9. On May 26, 2020, Respondent received coverage under the Stormwater Construction General Permit with permit tracking number ARR156646 (Permit), and an expiration date of October 31, 2021.

10. On June 11, 2020, DEQ conducted a construction stormwater inspection of the Site, and the following violations were documented:

- a. Trash was observed along the silt fence and haul road at the Site. This is a violation of Part I, Section B, Condition 13.D.2 and Part II, Section A, Condition 4. Condition G.1.f of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The Stormwater Pollution Prevention Plan (SWPPP) was not available at the Site during the inspection. This is a violation of Part II, Section A, Condition 2.A of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. The Notice of Coverage (NOC) was not posted at the Site. This is a violation of Part II, Section A, Condition 2.D of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. The silt fence installed along the haul road was not trenched, and therefore not properly installed and maintained. This is a violation of Part II, Section A, Condition 4.G.1.c of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. The one rock check dam installed in the drainage at the construction site does not provide adequate velocity dissipation for this site. This is a violation of Part II, Section A, Condition 4.G.3.b of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. Potable water is being used as dust suppression on the haul road and Site entrances and exit, and dewatering activities are occurring at the pit sumps. The SWPPP submitted with Respondent's Notice of Intent does not identify any allowable, non-stormwater discharges. The SWPPP must be updated to reflect these allowable, non-

stormwater discharges. This is a violation of Part II, Section A, Condition 4.I of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

g. There were no site inspection forms available for review during the inspection. This is a violation of Part II, Section A, Condition 4.L.3 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On June 17, 2020, Respondent submitted a response to the June 11, 2020 inspection to DEQ via email addressing the violations documented during the June 11, 2020 inspection.

12. On June 25, 2020, DEQ sent Respondent a copy of the June 11, 2020 Inspection Report.

13. On July 7, 2020, DEQ conducted a construction stormwater inspection of the Site in response to a complaint, and the following violation was documented:

a. Dewatering practices at the Site have resulted in turbid discharges to waters of the state. Respondent cut the levee of the pond causing turbid water to discharge to waters of the state. Discharges from dewatering activities without proper appropriate controls is a violation of Part I, Section B, Condition 13.C of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

14. On July 16, 2020, DEQ sent Respondent a copy of the July 7, 2020 Inspection Report.

15. On August 17, 2020, DEQ conducted a reconnaissance inspection of the Site in response to a complaint, and the following violation was documented:

a. Dewatering practices at the Site have resulted in turbid discharges to waters of the state. Dewatering activities that discharge turbid water to waters of the state is a violation of Part I, Section B, Condition 13.C of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

16. On August 27, 2020, DEQ sent Respondent a copy of the August 17, 2020 Inspection Report via certified letter.

17. On September 1, 2020, Respondent submitted a response to the August 17, 2020 Inspection Report.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease all discharges of turbid water, silt, and sediment to waters of the state from the Site and right-of-ways.
2. On or before the effective date of this Order, Respondent shall submit to DEQ for review and approval a report detailing the Best Management Practices (BMPs) being used to eliminate the discharge of turbid water and sediment from the Site.
3. Respondent shall comply with the terms and conditions of the Notice of Coverage (NOC) and the associated NPDES Stormwater Construction General Permit including, but not limited to, the following:
 - a. Divert concentrated or channelized flows of stormwater away from and around areas of disturbance on steep slopes;
 - b. Use specialized erosion and sediment controls for steep slopes, such as temporary and permanent seeding with soil binders, erosion control blankets, surface roughening, reducing the continuous slope length with terracing or diversions, gradient terraces, interceptor dikes and swales, grass-lined channels, pipe slope drains, subsurface drains, level spreaders, check dams, seep berms, and triangular silt dikes;

- c. Establish uniform perennial vegetation that provides 80% or more of cover by vegetation native to local undisturbed areas;
- d. Maintain or reestablish twenty-five (25) feet of natural buffer zone, as measured horizontally from the top of the bank to the disturbed area, from any waters of the state; and
- e. Maintain or reestablish fifty (50) feet of natural buffer zone, as measured horizontally from the top of the bank to the disturbed area, from established TMDL waterbodies, streams listed on the 303(d) list, Extraordinary Resource Waters (ERW), Ecologically Sensitive Waterbodies (ESW), or Natural and Scenic Waterways (NSW).

4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and for two (2) years after the effective date of this Order or until the termination of the Permit, Respondent shall submit monthly progress reports detailing the state of stabilization throughout all areas disturbed by the project. The progress reports shall include a copy of all site inspections, photographs depicting the state of stabilization or corrective actions, and an update of any other corrective actions taken to ensure that turbid water, silt, and sediment are not leaving the Site or right-of-ways throughout all areas disturbed by the project. In the event that any progress report is inadequate, DEQ will provide Respondent a written Notice of Deficiency identifying concerns to be addressed in the next monthly progress report.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Three Hundred Dollars (\$1300.00) or one-half of the full civil penalty of Six Hundred Fifty Dollars (\$650.00) 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.

6. 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 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 that 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 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 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 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 Rule 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 Rule 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 11th DAY OF January, ²⁰²¹~~2020~~ *pm*
Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Moss Plumbing, LLC

BY: James L. Moses
(Signature)

James L. Moses
(Typed or printed name)

TITLE: Land owner

DATE: Dec 10th 2020

