

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Washington County Road Department
Winslow Dirt Pit – Highway 71
2615 South Brink Drive
Fayetteville, AR 72701

LIS No. 21- 032
Permit No. AR0052795
AFIN 72-02302

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Washington County Road Department (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 construction sand and gravel mining site (“facility”) located on an unnamed road east off of Highway 71 South, approximately two (2) miles south of Brentwood, Washington County, Arkansas.

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.

2. Respondent discharges stormwater runoff to an unnamed tributary, thence to the West Fork of the White River, thence to the White River, thence to Beaver Lake, thence to the White River in Segment 4K of the White River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
4. 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).
5. 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.
6. Ark. Code Ann. § 8-4-217(a)(1), (2), and (3) provide:
 - (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].
7. Ark. Code Ann. § 8-4-217(b)(1) (C) provides:
 - 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.

8. 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.

9. 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.”

10. DEQ issued NPDES Permit Number AR0052795 (“Permit”) to Respondent on August 21, 2017. The Permit became effective on September 1, 2017, and expires on August 31, 2022.

March 7 and 11, 2019 Inspections

11. On March 7 and 11, 2019, DEQ conducted a routine compliance evaluation inspection of the facility and documented the following violations:

- a. The stormwater detention pond was not functioning properly. DEQ observed that the pond was shallow and turbid with evidence of sediment discharge. The stormwater detention pond was not constructed to specifications listed in the application packet submitted to DEQ. This failure violated Part III, Section B Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent does not have an operator with a Basic Industrial Wastewater License to operate the facility. Failure to maintain a Basic Industrial licensed operator is a violation of Part II, Condition 1 of the Permit. Failure to provide adequate operating staff that is duly qualified to carryout operations at this facility is a violation of Part III, Section B, Condition 1.B of the Permit. Each of these two (2) violations constitutes two (2) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

- c. The following Discharge Monitoring Reports (DMRs) were submitted past the deadline of the 25th day of the month following the monitoring period end date:
 - i. 2017: September, October, December;
 - ii. 2018: April, May, June, July, August, October, November, December; and
 - iii. 2019: January.

Failure to submit DMRs by the 25th of the month following the monitoring period end date is a violation of Part III, Section C Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- d. DMRs submitted by Respondent reported No Discharge; however, DEQ observed evidence of discharges during the inspections, and Respondent stated that discharges were likely occurring. Discharges from the outfall were not sampled and there was no mechanism or method to calculate flow or monitor for discharges. Respondent is responsible for monitoring, sampling, and reporting discharges in accordance with the Permit. Failure to sample the discharges and report those analyses on the DMRs is a violation of Part I, Section A of the Permit. Failure to maintain appropriate flow measurement devices is a violation of Part III, Section C, Condition 2 of the Permit. Reporting No Discharge on the DMRs when Respondent is aware that discharges are occurring is a violation of Part III, Section D, Condition 13 of the Permit. Each of these three (3) violations constitutes three (3) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
- e. Respondent submitted the February 2018 and March 2018 DMRs, reporting No Discharge on both DMRs, before the monitoring period end date. If a DMR is submitted before the monitoring period end date, a discharge could still occur

during the monitoring period and would not be included in the required reporting.

This action is a violation of Part III, Section D, Condition 13 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On April 16, 2019, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by May 2, 2019.

13. On May 13, 2019, Respondent submitted a response to the March 7 and 11, 2019 inspections.

14. On June 21, 2019, DEQ notified Respondent that the inspection response dated May 13, 2019, did not sufficiently address the violations. The letter requested Respondent submit additional information by July 9, 2019.

15. On August 27, 2019, DEQ sent Respondent a letter for failure to respond to the June 21, 2019 letter requesting additional information. In this letter, DEQ requested that Respondent submit a response to DEQ by September 12, 2019.

16. On September 12, 2019, DEQ received additional information from Respondent in response to the violations cited in the March 7 and 11, 2019 inspection reports. The additional information contained the operator name.

17. On December 3, 2019, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

18. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from October 1, 2015 through October 31, 2019:

- a. Nine (9) violations of Total Suspended Solids (TSS).

19. Each of the nine (9) discharge limitation violations listed above constitutes a separate permit violation for a total of nine (9) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

20. The review also revealed that Respondent failed to measure the effluent flow daily when discharging in accordance with Part I, Section A of the Permit.

21. On December 4, 2019, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP), certified by a Professional Engineer (PE) licensed in the state of Arkansas, be submitted by January 17, 2020. The letter also notified Respondent that the effluent flow should be measured daily when discharging and that the DMRs are due no later than the 25th of the month following the monitoring period end date.

22. On January 17, 2020, Respondent submitted a CAP to DEQ with a final compliance date of March 3, 2020.

23. On January 29, 2020, DEQ notified Respondent the CAP, dated January 17, 2020, was deemed adequate with the following comments:

a. Erosion control measures should be put in place to prevent erosion of areas that drain to the pond, as well as areas around the pond that have been disturbed by construction.

b. Monthly reports detailing the progress made in achieving final compliance with the permit limits should be submitted with the first report due by February 28, 2020.

24. On March 1, 2020, Respondent submitted the first monthly report detailing actions taken to achieve compliance.

25. On June 30, 2020, and again on July 30, 2020, DEQ requested that Respondent submit a progress report and submit corrected Non-Compliance Reports (NCRs). The NCRs for

monitoring periods ending May 2019; June 2019; August 2019; September 2019; October 2019; November 2019; December 2019; January 2020; February 2020; March 2020; April 2020; May 2020; and June 2020, stated that pond construction was not complete, but the progress report submitted March 1, 2020, stated construction was complete. DEQ requested the progress report be submitted by August 7, 2020.

26. On August 6, 2020, Respondent notified DEQ that the pond construction was complete, the discharge monitoring equipment was installed and operating at the outfall, and GTS, Inc. was taking grab samples to monitor TSS.

27. On August 6, 2020, DEQ requested that Respondent submit the next monthly progress report by August 31, 2020, and update the NCRs.

28. On March 2, 2021, DEQ confirmed that the operator holds a Class I license, but the Permit requires the operator to hold a Basic Industrial License.

August 24, 2020 Inspection

29. On August 24, 2020, DEQ conducted a Reconnaissance Inspection of the facility and documented the following violations:

- a. The detention pond was in need of maintenance. Failure to maintain the detention pond is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. A culvert was installed that allows stormwater that accumulates from the disturbed areas on the west side of the mine to flow north under the entry road, bypassing the detention pond. The intentional diversion of stormwater from the detention pond, which is part of the treatment process, is a violation of Part III,

Section B, Condition 4 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- c. Stormwater from material stockpiles located north of the detention pond was not routed in its entirety to the detention pond and through Outfall 001, thus allowing potentially contaminated stormwater to bypass treatment and enter the receiving stream. This condition is a violation of Part III, Section B, Condition 4 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Respondent is constructing a dam downstream of the facility's outfall and restricting flow of the receiving stream. Failure to notify DEQ of the activity prior to construction of the dam is a violation of Part III, Section D Condition 1.B of the Permit and Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore is a violation of Ark Code Ann. § 8-4-217(a)(3).
- e. The construction of the dam was visually estimated as greater than one (1) acre, and the construction physically modifies the receiving stream. The construction was not approved by DEQ and is not authorized by the current Permit. Failure to obtain a construction permit for the extension or modification of the facility that physically alters any waters of this state is a violation of Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. Respondent is constructing a dam in the receiving stream, downstream of the facility's outfall. Respondent was performing in-stream activities without having been issued a Short Term Activity Authorization (STAA) from DEQ. Elevated turbidity and evidence of grading within the receiving stream was observed in the area upstream of the dam. Conducting in-stream activities without a STAA is a

violation of APC&EC Rule 2.305 and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

30. On September 29, 2020, DEQ notified Respondent of the inspection results and requested a written response be submitted to DEQ by October 13, 2020.

31. On October 1, 2020, DEQ requested that Respondent submit photographic documentation of the completed pond construction by October 7, 2020. DEQ also notified Respondent of the additional effluent violations since the CAP was requested in December 2019.

32. On October 7, 2020, Respondent submitted photo documentation of the completed pond construction to DEQ.

33. On October 13, 2020, DEQ received Respondent's response to the August 24, 2020, inspection.

34. On November 3, 2020, DEQ sent a letter to Respondent requesting additional information regarding the inspection response dated October 13, 2020.

35. On November 5, 2020, DEQ and Respondent met to discuss the letter dated November 3, 2020. The following items were discussed:

- a. The detention sediment pond will be redesigned and rebuilt. A plan and timeframe for the rebuild is due November 20, 2020.
- b. A stormwater map with locations of Best Management Practices (BMPs) is due by November 20, 2020.
- c. A Short Term Activity Authorization (STAA) was submitted to DEQ on November 5, 2020.

- d. Photo documentation of the north side of the dam including establishment of vegetation and maintenance of BMPs in place will be submitted by November 20, 2020.
- e. Respondent is currently working with Natural Resources Department (NRD) regarding permitting of the dam site.
- f. Respondent will need to submit a permit modification application.
- g. Respondent will need to submit a construction permit application.

36. DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from November 1, 2019 through October 31, 2020:

- a. Sixteen (16) violations of Total Suspended Solids.

37. Each of the sixteen (16) discharge limitation violations listed in Paragraph 35 above constitutes a separate permit violation for a total of sixteen (16) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

38. The review of the DMRs also revealed that Respondent failed to submit DMRs on time for the following monitoring periods: November 2019; April 2020; and May 2020. Failure to submit DMRs with the monitoring results obtained during the previous monitoring period no later than the 25th of the month following the completed monitoring period is a violation of Part III, Section C, Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

39. The review also revealed that Respondent failed to measure the effluent flow daily when discharging as required by Part I, Section A of the Permit. Respondent reported a No Data Indicator Code, "E" to denote Failure to Sample/Conduct Analysis.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.
2. Respondent shall cease all construction activity that requires the issuance of a state construction permit. Respondent shall not resume construction activities until DEQ issues a state construction permit to Respondent.
3. On or before the effective date of this Order, Respondent shall submit to DEQ a certification that all construction activity that requires a state construction permit has ceased and will not resume until DEQ issues a state construction permit to Respondent.
4. On or before the effective date of this Order, Respondent shall submit to DEQ a permit application for a stormwater construction permit and pay any associated fees.
5. On or before the effective date of this Order, Respondent shall submit an application to modify the current Permit to include all areas of the site, including all areas under construction or being rebuilt.
6. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a Revised CAP developed by a Professional Engineer licensed in the state of Arkansas. The Revised CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in the Findings of Fact and prevent future violations. The Revised CAP shall include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall

comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

7. On or before the fifteenth (15th) day of the month following the effective date of this Order and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with the Permit including, but not limited to, Part I, Section A of the Permit.

8. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ proof that the operator has obtained a Basic Industrial license.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Dollars (\$7000.00), of which Five Thousand Dollars (\$5000.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Five Thousand Dollars (\$5000.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Seven Thousand Dollars (\$7000.00) shall become due and payable immediately to DEQ. Payment of the civil penalty in the amount of Two Thousand Dollars (\$2000.00) 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

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 13 DAY OF April, 2021.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Washington County Road Department

BY: [Signature]
(Signature)

Joseph K. Wood
(Typed or printed name)

TITLE: County Judge

DATE: April 8, 2021