

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF: Dennis H. Everett, Individually and as President of

**Everett Brothers, Inc. - Everett Brothers SEW II
Izard County**

**LIS NO. 05- 184
AFIN 33-00014**

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 Everett Brothers, Inc. - Everett Brothers SEW II (hereinafter the "Respondent") and ADEQ, it is hereby agreed and

stipulated that the following **FINDINGS OF FACT** and **ORDER AND AGREEMENT** be entered herein.

FINDINGS OF FACT

1. Everett Brothers, Inc. - Everett Brothers SEW II is located in Izard County, Arkansas. The Respondent operates a construction site of approximately 5-10 acres that requires a NPDES Stormwater Permit.
2. On June 6, 2005, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed that the site was not permitted, in violation of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended);
3. The inspection also revealed the following deficiencies:
 - a. The Storm Water Pollution Prevention Plan (SWPPP) was not available for review by ADEQ personnel at the time of the inspection;
 - b. Erosion control measures (ECMs) were not installed, improperly installed, or not adequately maintained, specifically there were no ECMs on the construction site;
 - c. Site inspections were not being performed, or inspection records were not being maintained on site;
 - d. The Respondent was not tracking rainfall data to ensure inspections are conducted within 24 hours of the end of a storm that is 0.5 inches or greater;
 - e. The site was not properly posted.
4. Notice of the Inspection Report was sent to the Respondent on June 14, 2005. As of August 29, 2005, the Department has not received a written response to the inspection from the Respondent, although several telephone conversations occurred between the

Department and Mr. Connie Everett, Vice-President of Everett Brothers, Inc. Mr. Everett stated that he did not believe that the site was larger than five acres, but would do whatever it took to comply with the law. A permit application and Notice of Intent (NOI) was mailed to Mr. Everett.

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 Respondent, 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 Respondent shall submit to ADEQ a comprehensive Corrective Action Report which shall detail the steps the Respondent took to achieve full compliance with the Arkansas Water and Air Pollution Control Act at this construction site. This Report shall include a copy of the Storm Water Pollution Prevention Plan (SWPPP) including site map indicating where runoff controls were placed and photo documentation of site runoff controls. The Respondent shall also submit a Notice of Intent (NOI). The corrective action report shall be 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. In compromise and full settlement of the civil penalties for violations (specified in the Findings of Fact), the Respondent agrees to pay to ADEQ the total sum of One Thousand Dollars (\$1000) as a voluntary civil penalty. Payment of the penalty shall be made within thirty (30) days of the effective date of this Order, 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.

3. All submittals required by this Order are subject to approval by ADEQ. In the event of any deficiency, the Respondent 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 4 below.

4. 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 Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay, on demand, to ADEQ civil penalties according to the following schedule:

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|----|---|------------------|
| 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 Respondent's failure to comply with the requirements of this Order.

5. 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 Respondent with the requirements or deadlines of this Order, the Respondent 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.

6. ADEQ may grant an extension of any provision of this Order, provided that the 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 the 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 the Respondent and the length of the delay attributable to such circumstances shall rest with the Respondent. Failure to notify the ADEQ promptly, as provided in paragraph 5 of this section, shall be grounds for a denial of an extension.

7. 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.

8. 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.

9. 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 Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Respondent of its responsibilities for obtaining any necessary permits.

SO ORDERED THE 23rd DAY OF September, 2005



Marcus C. Devine, Director

APPROVED AS TO FORM AND CONTENT:

BY: 

(Signature)

Connie Everett

(Typed or printed name)

TITLE: Vice President

(Typed or printed title)

DATE: 9-6-05