

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**Bruce Chavis, Individually and as Owner,
BRT Development - Pleasant Hills Subdivision
Garland County, Arkansas**

**LIS NO. 05- 236
AFIN 26-00900**

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 Bruce Chavis, Individually and as Owner of BRT Development - Pleasant Hills Subdivision (hereinafter the "Permittee")

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. BRT Development - Pleasant Hills Subdivision is located in Garland County, Arkansas. The Respondent operates a construction site of approximately 120 acres that requires a NPDES Stormwater Permit.
2. On February 11, 2005, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed 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 noted 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 in place, with the exception of inadequately installed silt fence along the creek and inadequately maintained hay bales;
 - c. The site was not properly posted;
 - d. There was evidence of off-site tracking;
 - e. Inspections were not being properly conducted, and inspection records were not available at the time of the inspection; and,
 - f. Rainfall data was not being tracked at the time of the inspection.
4. Notice of the Inspection was sent to the Permittee on February 25, 2005. A response was requested by March 18, 2005. An unsigned response was received on

March 17, 2005. The Department returned the response for signature by the Permittee on May 17, 2005. A response, dated May 25, 2005, was received by the Department on May 25, 2005.

5. A Notice of Intent was received by the Department on May 25, 2005. NPDES General Storm Water Permit Number ARR150995 was issued on June 7, 2005.

6. 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 Permittee, 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 Permittee shall submit to ADEQ a comprehensive Corrective Action Report which shall detail the steps the Permittee 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 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 Permittee agrees to pay to ADEQ the total sum of Two Thousand Dollars (\$2,000.00) 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 Permittee 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 Permittee should fail to meet any such requirements or deadlines, the Permittee 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 Permittee'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 Permittee with the requirements or deadlines of this Order, the Permittee 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 Permittee 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 Permittee. 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 Permittee and the length of the delay attributable to such circumstances shall rest with the Permittee. 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 Permittee from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Permittee of its responsibilities for obtaining any necessary permits.

SO ORDERED THE 6th DAY OF Dec, 2005



Marcus C. Devine, Director

APPROVED AS TO FORM AND CONTENT:

BY: 

(Signature)

Bruce Chavis

(Typed or printed name)

TITLE: Co-owner BRT Development

(Typed or printed title)

DATE: 11-21-05