

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**Donnie Sealy, Individually and as Owner of
Arkansas Real Estate Development
Pinson Estates
Miller County**

**LIS NO. 06-061
AFIN 46-00545**

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 Arkansas Real Estate Development, Pinson Estates (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. Arkansas Real Estate Development, Pinson Estates, is located in Miller County, Arkansas. The Permittee operates a construction site of approximately 18 acres pursuant to the conditions of NPDES General Permit for Facilities Discharging Storm Water Associated with Construction Activity Located in the State of Arkansas - ARR151173 (hereinafter "the Permit") issued by the authority of ADEQ.

2. On August 19, 2005, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed the following violations:

- a. There was evidence of storm water sediment discharge to Nix Creek in violation of A.C.A. §8-4-217(a)(2); and,
- b. Erosion control measures (ECMs) were not installed, improperly installed, and not adequately maintained as required by Part I, Section C, Paragraph 3 (a), and Part II, Section A, Paragraph 4(b).

3. Notice of the Inspection was sent to the Permittee on October 25, 2005. A response, dated November 13, 2005, was received by the Department on November 15, 2005. The response stated the following:

- a. Corrective action has been taken to maintain the clarity of the stream by placing and maintaining silt fencing with hay bale retainers and supports, as well as, allowing natural vegetation to form a green buffer zone;
- b. Photographs documenting corrective actions were included in the response; and,

c. Silt fencing, hay bale retainers, and natural vegetation are being used as erosion control measures and to protect the stream.

4. On January 3, 2006, an inspection was conducted by an ADEQ Water Division Field Inspector. The inspection revealed dust was not being minimized as required by Part II, Section A, Paragraph 4(iii)(B). During the inspection, the Permittee stated a water truck would be brought onsite for use during dry and/or windy times to keep the dust down.

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 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 consist of a copy of the updated Storm Water Pollution Prevention Plan (SWPPP) including a site map indicating where runoff controls were placed. The corrective action report shall be signed in accordance with Part II, Section B, Paragraphs 9 and 10 of the Permit and 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 following:

a. The sum of Three Thousand Five Hundred Dollars (\$3,500.00) for the violations found during the August 19, 2005 inspection; and,

b. The sum of Two Hundred Dollars (\$200.00) for the violations found during the January 3, 2006 inspection.

3. The total sum of Three Thousand Seven Hundred Dollars (\$3,700.00) shall be paid 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.

4. 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 5 below.

5. 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:

- | | | |
|----|-----------------------------------------|------------------|
| 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.

6. 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.

7. 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 6 of this section, shall be grounds for a denial of an extension.

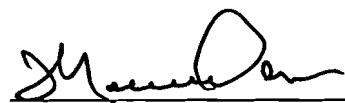
8. This Order is subject to public review and comment in accordance with A.C.A. §8-4-103 (d) and Arkansas Pollution Control and Ecology Commission Regulation No. 8 and

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.

9. 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.

10. 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 13th DAY OF April, 2006



Marcus C. Devine, Director

APPROVED AS TO FORM AND CONTENT:

BY:


(Signature)

Donnie Sealy
(Typed or printed name)

Donnie Sealy

TITLE: MEMBER
(Typed or printed title)

member

DATE: 4-10-06

4-11-06