

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Frank Tripp
Tripp Property Clearing
816 Eagle Mountain Blvd.
Batesville, AR 72501

LIS No. 24- 018
Permit No ARR157856 pending
AFIN 32-00687

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 Frank Tripp (Respondent) and the Division of Environmental Quality (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 construction site (“site”) located at the end of Jennings Lane, Batesville, Independence County, Arkansas.
2. Respondent discharges stormwater to an unnamed tributary to White River.
3. Respondent is subject to regulation 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 a NPDES permit.

6. DEQ regulates stormwater discharges associated with construction activity pursuant to the NPDES Stormwater Construction General Permit, Permit Number ARR150000 (“General Permit”). DEQ issued the General Permit with an effective date of November 1, 2021, and an expiration date of October 31, 2026.

7. Respondent’s activities at the site fall within the definition of “Construction Activities” in Part I, Section A of the General Permit, making the site a “Construction Site” as defined by the General Permit. In accordance with the General Permit and APC&EC Rule 6, Respondent is required to have permit coverage for stormwater discharges associated with construction activity.

8. 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].

9. 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.

10. 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.”

11. On February 8, 2023, DEQ received a complaint regarding Respondent’s construction activity at the site.

12. On February 16, 2023, DEQ conducted a reconnaissance inspection of the site. The inspection revealed the following:

- a. Respondent had begun construction activities at the site.
- b. The site qualifies as a large construction site as defined in the Construction Stormwater General Permit.
- c. Respondent had not obtained permit coverage under the Construction Stormwater General Permit prior to beginning construction activities and had not submitted a Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), or paid the permit fee to DEQ Office of Water Quality - Permits Branch. Those actions are required to obtain permit coverage under the Construction Stormwater General Permit. Respondent’s failure to take any action to obtain permit coverage or otherwise comply with the rules that regulate stormwater discharges associated with construction activity is a violation of Ark. Code Ann. § 8-4-217(b).

13. On February 23, 2023, DEQ notified Respondent of the inspection results via letter and requested a written response addressing each of the violations be submitted to DEQ on or before March 10, 2023.

14. On April 5, 2023, DEQ sent a second letter to Respondent and requested a written response by April 19, 2023.

15. On April 13, 2023, Respondent submitted a response including a Notice of Intent and a SWPPP to DEQ. Respondent also paid the fee required to gain coverage under the permit.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the NPDES Stormwater Construction General Permit, Permit Number ARR150000.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Two Hundred Dollars (\$1200.00), or one-half of the full civil penalty of Six Hundred Dollars (\$600.00) 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. If Respondent violates any term of this Order, the full balance of One Thousand Two Hundred Dollars (\$1200.00) shall be payable immediately to DEQ. Payment is due within thirty (30) calendar days of the effective date of this Order. 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.

3. 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

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer 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 30th DAY OF JANUARY, 2024.

Caleb J. Osborne, Division of Environmental Quality, Director
Chief Administrator, Environment

APPROVED AS TO FORM AND CONTENT:

Frank Tripp

BY:
(Signature)

FRANK TRIPP
(Typed or printed name)

X TITLE: Director

X DATE: 1-26-24