



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Stormwater Enforcement: Arkansas Department of Energy and Environment (Division of Environmental Quality) and Fayetteville, Arkansas Open Cut/Topsoil Mine Operator Enter into Consent Administrative Order

11/15/2019

The Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”) and MMSC, LLC, d/b/a Heritage Farms (“Heritage”) entered into an October 9th Consent Administrative Order (“CAO”) addressing alleged violations of the Clean Water Act General Stormwater Permit regulations. See LIS No. 19-096.

The CAO provides that Heritage operates an open cut and topsoil mine (“Facility”) in Fayetteville, Arkansas.

The Facility is stated to discharge stormwater to an unnamed tributary of the Muddy Fork of the Illinois River and eventually to the Arkansas River Basin.

Dischargers of stormwater associated with industrial activity are required by Arkansas Pollution Control and Ecology Commission Regulation No. 6 to obtain coverage under the National Pollution Discharge Elimination System (“NPDES”) Industrial Stormwater General Permit or an individual permit issued by DEQ.

Heritage is stated to be classified as SIC code 1442 Construction Sand and Gravel and NAICS code 21232 Sand, Gravel, Clay, and Ceramic and Refractory Minerals Mining and Quarrying. As a result, the Heritage Facility is stated to be regulated pursuant to the NPDES permit.

A DEQ inspector is stated to have conducted a complaint investigation on March 1, 2019 of the Facility. The investigation is stated to have indicated violations including:

- Operation of an open-cut mine site without a permit for the discharge of stormwater associated with industrial activity
- Discharge of stormwater associated with industrial activity into the Muddy Fork of the Illinois River

DEQ is stated to have received a response from Heritage regarding the complaint investigation. However, the CAO states that the response was inadequate and requested a written response to certain cited violations.

Heritage submitted a Notice of Intent as its response to the violations. The Notice of Intent is stated to have not been signed and failed to include a Stormwater Pollution Prevention Plan ("SWPPP") and did not include the required fee.

DEQ is stated to have transferred the permit to Heritage with a new permit number which permits the Facility to engage in open-cut mining at this Facility.

The CAO provides that a routine inspection was conducted on August 21, 2018 of the Facility. This inspection allegedly revealed the following violation:

- Operation of an open-cut mining site without a permit for the discharge of stormwater associated with industrial activity

Heritage is stated to have indicated on November 27, 2018 that a Notice of Intent and SWPPP were being submitted. They were subsequently received by DEQ. DEQ notified Heritage that coverage under the referenced Industrial Stormwater General Permit was not appropriate and that it was considering permitting the Facility through an individual NPDES permit to cover the proposed discharges.

The CAO requires that Heritage cease open-cut mining activities at the Facility until such time that it has obtained all appropriate permits from DEQ in accordance with an open-cut mining permit. Further, within 30 days of the effective date of the CAO Heritage is required to submit to DEQ for review and approval a Corrective Action Plan developed by a professional engineer licensed in the State of Arkansas to correct the alleged violation referenced in the Findings of Fact and to stabilize the Facility. The elements of the CAP are described. Compliance with the terms, milestone schedule, and final compliance date of the CAP are enforceable once approved by DEQ. In addition, monthly progress reports must be submitted.

A civil penalty of \$6,000 is assessed which could be reduced to \$3,000 if the CAO is signed and returned to DEQ within 20 calendar days of receipt of the CAO.

A copy of the CAO can be downloaded [here](#).