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Stormwater Enforcement/Construction: Arkansas Department of Energy and Environment - Division of Environmental Quality and Marble Falls Construction Site Operator Enter into Consent Administrative Order

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and Down by the Falls, LLC (“DF”) entered into a January 27th Consent Administrative Order (“CAO”) addressing alleged violations of the Clean Water Act related to the regulation of stormwater discharges associated with construction activity. See LIS No. 21-008.

The CAO provides that DF operates the former Dog Patch, USA large construction site (“Facility”) in Marble Falls, Arkansas.

DF is stated to be regulated pursuant to the Clean Water Act National Pollution Discharge Elimination System (“NPDES”).

DEQ is stated to have conducted a Construction Stormwater Inspection at the Facility on August 5, 2020. The inspection allegedly identified the following violations:

1. The Facility had neither applied for nor been issued coverage under the SCGP. Failure to obtain coverage under and comply with the SCGP is a violation of the Act and the Clean Water Act.
2. Construction activities were occurring with over five (5) acres of disturbed soil. Respondent's construction activities at the site fall within the definition of a "Large Construction Site" as set forth in APC&EC Rule 6.103 and Part I, Section A of the SCGP. Respondent is operating a large construction site without a permit for the discharge of stormwater associated with construction activity. This unpermitted discharge is a violation of Ark. Code Ann. § 8-4-217((I)(C) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
3. DF was performing in-stream activities in Mill Creek without having been issued a Short Term Activity Authorization (STAA) from DEQ. Respondent was actively dredging Mill Creek in violation of APC&EC Rule 2.305 and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

4. DF's unauthorized dredging activities were causing a visible increase in turbidity in Mill Creek. A visible increase in turbidity of receiving waters from in-stream activities is a violation of APC&EC Rule 2.503 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

The CAO provides that on August 17, 2020, DEQ sent DF a letter:

- Alleging that the conditions at the Facility constituted violations of the Clean Water Act
- Requesting that DF cease immediately the sediment discharges from the Facility
- Comply with the terms of the Arkansas NPDES Stormwater Construction General Permit ("Permit")
- Obtain a Short-Term Activity Authorization
- Initiate corrective action to eliminate discharges of silt and sediment to waters of the state

DF is stated to have submitted a Short-Term Activity Authorization Request which was approved by DEQ. Further, DF is stated to have submitted a Stormwater Pollution Prevention Plan and Notice of Intent for coverage under the Arkansas Permit. Such Stormwater Pollution Prevention Plan and Notice of Intent were approved by DEQ, which issued coverage.

The CAO requires that DF immediately cease all discharges of turbid water, silt and sediment to waters of the state from disturbed areas of DF's construction sites and right-of-ways. Further, DF is required to comply with the terms and conditions of the Notice of Coverage and associated Permit. Paragraph 2 under "Order and Agreement" of the CAO details certain required activities.

The CAO provides for required progress reports detailing the state of stabilization throughout all areas disturbed by the project. The elements of the progress reports are described along with the time periods.

A civil penalty of \$3,000 is assessed which could have been reduced to \$1,500 if the CAO was signed and returned to DEQ within 20 calendar days of its receipt.

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