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Stormwater Enforcement: Arkansas Department of Energy and Environment - Division of Environmental Quality and Washington County Sand/Gravel Mine Operator Enter into Consent Administrative Order

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and the Washington County Arkansas Road Department (“Department”) entered into an April 13th Consent Administrative Order (“CAO”) addressing violations of a water/stormwater permit. See LIS No. 21-032.

The CAO provides that the Department operates a construction sand and gravel mining site (“Facility”) in Washington County, Arkansas.

The Facility is stated to discharge stormwater runoff to an unnamed tributary which eventually flows to the White River. Such discharge is stated to be regulated pursuant to a Clean Water Act National Pollution Discharge Elimination (“NPDES”) permit.

DEQ is stated to have conducted routine compliance evaluation inspections on March 7 and 11, 2019, and allegedly identified the following violations:

- The stormwater detention pond was not functioning properly. DEQ observed that the pond was shallow and turbid with evidence of sediment discharge.
- Respondent does not have an operator with a Basic Industrial Wastewater License to operate the facility.
- Discharge Monitoring Reports (DMRs) were submitted past the deadline of the 25th day of the month following the monitoring period end date . . .
- DMRs submitted by Respondent reported No Discharge; however, DEQ observed evidence of discharges during the inspections
- Respondent submitted the February 2018 and March 2018 DMRs, reporting No Discharge on both DMRs, before the monitoring period end date.

The Department is stated to have responded to DEQ regarding the alleged violations. DEQ contacted the Department and asked for additional information by July, 2019. Additional information was provided.

DEQ is stated to have conducted a review of certified DMRs submitted by the Department in accordance with the NPDES permit. The following violations of the permitted effluent discharge limits are stated to have been identified:

- Nine violations of Total Suspended Solids (TSS)

The review is also stated to have determined that the Department failed to measure the effluent flow daily when discharging in accordance with Part I, Section A of the permit.

DEQ is stated to have on December 4, 2019, sent the Department a letter requesting a Corrective Action Plan ("CAP") by an Arkansas Professional Engineer by January 7, 2020. Such letter also requested that the effluent flow be measured daily when discharging and that the DMRs be submitted no later than the 25th of the month following the monitoring period end date.

The Department submitted a CAP to DEQ with a final compliance date of March 3, 2020. DEQ determined that the CAP was adequate but also requested certain additional measures.

On March 1, 2020, the Department submitted the first monthly report detailing actions taken to achieve compliance. Additional progress reports were requested by DEQ.

The Department notified DEQ on August 6, 2020 that:

- Pond construction was complete
- Discharge monitoring equipment was installed and operating at the outfall
- GTS, Inc., was taking grab samples to monitor TSS

DEQ is also stated to have confirmed that the operator holds a Class I license but that the permit requires the operator to hold a Basic Industrial License.

DEQ is stated to have conducted a Reconnaissance Inspection of the Facility and documented the following alleged violations:

- The detention pond was in need of maintenance.
- A culvert was installed that allows stormwater that accumulates from the disturbed areas on the west side of the mine to flow north under the entry road, bypassing the detention pond.
- Stormwater from material stockpiles located north of the detention pond was not routed in its entirety to the detention pond and through Outfall 001, thus allowing potentially contaminated stormwater to bypass treatment and enter the receiving stream.
- Respondent is constructing a dam downstream of the facility's outfall and restricting flow of the receiving stream.
- The construction of the dam was visually estimated as greater than one (1) acre, and the construction physically modifies the receiving stream.
- Respondent is constructing a dam in the receiving stream, downstream of the facility's outfall.

DEQ is stated to have notified the Department of the inspection results and requested a written response. In addition, DEQ subsequently requested the Department to submit photographic documentation of the completed pond construction.

The Department subsequently submitted photo documentation and additional information.

The Department and DEQ are stated to have met to discuss certain items which included:

1. The detention sediment pond will be redesigned and rebuilt. A plan and timeframe for the rebuild is due November 20, 2020.
2. A storm water map with locations of Best Management Practices (Bumps) is due by November 20, 2020.
3. A Short Term Activity Authorization (STATA) was submitted to DEQ on November 5, 2020.

4. Photo documentation of the north side of the dam including establishment of vegetation and maintenance of Bumps in place will be submitted by November 20, 2020.
5. Respondent is currently working with Natural Resources Department (NERD) regarding permitting of the dam site.
6. Respondent will need to submit a permit modification application.
7. Respondent will need to submit a construction permit application.

Further, DEQ is stated to have conducted a follow-up review of DMRs which indicated the following violations:

- Sixteen violations of Total Suspended Solids.

In addition, the CAO provides that DEQ determined that certain DMRs were not submitted on time for specified monitoring periods.

The CAO requires that the Department submit all DMRs in accordance with Part III, Section C, Condition 5 of the permit. Further, it is required to cease all construction activity that requires the issuance of a state construction permit until DEQ issues such permit to the Department. In addition, the Department is required to submit to DEQ a certification that all construction activity that requires a state construction permit has ceased and will not resume until DEQ issues a state construction permit to the Department.

On or before the effective date of the CAO, the Department is required to submit to DEQ a permit application for a stormwater construction permit and pay any associated fees. The application shall modify the current permit to include all areas of the site, including all areas under construction or being rebuilt.

The Department is required to submit within 30 days of the effective date of the CAO for review and approval by DEQ a revised CAP developed by a Professional Engineer licensed in the State of Arkansas. Such revised CAP shall include:

- Methods and available technologies that will be used to correct the violations listed in the Findings of Fact
- Best available technologies that will be used to prevent future violations

A reasonable milestone schedule with a final date of compliance will also be required.

Certain additional progress reports will also be required.

Within 90 days of the effective date of the CAO the Department is required to submit to DEQ proof that the operator has obtained a Basic Industrial License.

A civil penalty of \$7,000 is assessed of which \$5,000 is conditionally suspended contingent upon the Department complying with the CAO.

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