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Stormwater Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and Benton County Red Clay Fill Mining Operation Enter into Consent Administrative Order

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The Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”) and K&M Excavating, LLC (“K&M”) entered into a May 13th Consent Administrative Order (“CAO”) addressing alleged violations of a Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit. See LIS No. 24-090.

The CAO provides that K&M operates a rocky red clay fill material mining operation (“Facility”) in Benton County, Arkansas.

The Facility is stated to discharge treated industrial stormwater to an unnamed tributary of Little Osage Creek which eventually flows to the Illinois River. The discharge is regulated pursuant to an NPDES permit.

DEQ is stated to have conducted a compliance evaluation inspection of the Facility on April 27, 2022. DEQ and the K&M are stated to have corresponded regarding the alleged violations.

The CAO provides that K&M has not responded to certain violations noted in the inspection report, which include:

- Discharges not being monitored and reported.
- Stormwater pond west levee was cut to increase drainage from the pond and the levee has not been repaired to restore full capacity of the pond.
- High levels of sediment observed in the stormwater pond.
- Records of any flow monitoring activities not being recorded.

Part III, Section D, Condition 10 of the permit requires K&M to submit a complete permit renewal application at least 180 days prior to the expiration date of the NPDES permit if the regulated activity is to continue after the expiration date. K&M is stated to intend to operate the Facility beyond the expiration date.

DEQ received a permit renewal application from K&M on July 19, 2023, which was deemed incomplete. Additional information was submitted by K&M. As a result, on August 7, 2023, the application was

deemed administratively complete. However, the renewal application was not received by July 4, 2023, constituting a violation of Part III, Section D, Condition 10 of the NPDES permit.

DEQ conducted a review of certified Discharge Monitoring Reports (“DMRs”) on March 26th. The following violations were allegedly identified:

- Two violations of Total Suspended Solids
- One violation of Oil and Grease

The review of the DMRs is also stated to have indicated that K&M failed to submit a Non-Compliance Report (“NCR”) for effluent violations reported during the May 2022 monitoring period. Failure to submit DMRs by the due date were indicated for the following six monitoring periods:

- 2020 – November
- 2021 – November
- 2022 – January, May, and November
- 2023 – April

The CAO requires that K&M comply with the existing permit until the effective date of the permit renewal. Further, on or before the effective date of the CAO, K&M is required to provide an adequate response to the April 27, 2022, compliance inspection. In addition, K&M is required to submit NCRs and DMRs in accordance with the relevant provisions of the NPDES permit.

Within 60 calendar days of the effective date of the renewal permit, K&M is required to submit a Corrective Action Plan (“CAP”) to repair the levee. The CAP must be certified by an Arkansas Professional Engineer and include a reasonable milestone schedule and final compliance date not to exceed July 31, 2025. Quarterly progress reports are required.

K&M is required to take flow measurements in accordance with the NPDES permit. Lasting for one year, K&M is required to attach flow records to the corresponding DMRs via NetDMR showing that flow has been measured at least twice a week for that monitoring period.

A civil penalty of \$10,800 is assessed which could have been reduced by one-half 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](#).