

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Oltmans Development, Inc.
1930 N Reynolds Road
Bryant, AR 72022

LIS No. 24- **165**
Permit No. ARR157297
AFIN 63-03853

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 Oltmans Development, Inc. (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") for Big Rock Estates Subdivision located due south of 888 Rancy Road, Benton, Saline County, Arkansas.
2. Respondent discharges stormwater to an unnamed tributary of Dry Creek, thence to Dry Creek, thence to the North Fork of the Saline River, thence to the Saline River, thence to the Ouachita River. The North Fork of the Saline River is designated as an Ecologically Sensitive Waterbody (ESW) and an Extraordinary Resource Water (ERW) in APC&EC Rule 2, Regulation Establishing Water Quality Standards for Surface Waters in the State of Arkansas.
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 on May 4, 2021, with an effective date of November 1, 2021, and an expiration date of October 31, 2026.

7. Respondent submitted a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) for coverage under the General Permit on February 14, 2022. DEQ issued Notice of Coverage (NOC) to Respondent with Permit Tracking Number ARR157297 (“Permit”) with a coverage date of March 24, 2022, and an expiration date of October 31, 2026.

8. Ark. Code Ann. § 8-4-217(a)(2), (3) provides:

(a) It shall be unlawful for any person to:

...

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

9. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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 regulation 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 March 29, 2023, DEQ received a complaint alleging that Respondent was operating without proper Best Management Practices (BMPs) in place to mitigate sediment-laden stormwater from leaving the site. Complainant stated that the site did not have silt fencing or erosion controls in place, and that stormwater runoff was entering Dry Creek.
12. On May 3, 2023, DEQ conducted a construction stormwater inspection of the site. The inspection revealed the following violations:
 - a. A Notice of Coverage (NOC) was not posted at the site in an area available to the public, in violation of Part II.A.2.D of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
 - b. No silt fencing was observed to prevent sediment-laden stormwater from leaving the site. The posted site map indicated that silt fencing was installed. Upon changes at the site, the SWPPP must be updated to reflect the new conditions at the site within seven (7) business days. The site map should be corrected to reflect the current state of the site. The failure to update the SWPPP and site map to reflect changes is a violation of Part II.A.3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- c. Evidence of sediment-laden stormwater leaving the site and off-site tracking was observed, in violation of Part II.A.4.J.2 of the Permit and Ark. Code Ann. § 8-4-217 (a)(2) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Inspections were not being conducted at the frequency specified in the SWPPP. Inspections are required to be conducted every seven (7) days per Part II.A.4.N of the Permit. Failure to conduct inspections at the required frequency is a violation of Part II.A.4.N of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. The accumulation of gravel was noted at the unnamed tributary of Dry Creek, and rock dams had been installed. DEQ inspectors referred this condition directly to the U.S. Army Corp of Engineers – Vicksburg. If in-stream activity were to continue, Respondent must apply for and receive a Short-Term Activity Authorization (STAA) from DEQ prior to conducting additional in-stream activity.

13. On May 25, 2023, DEQ received a complaint alleging that Respondent did not have environmental protectors installed to mitigate sediment-laden stormwater from leaving the site. Complainant stated that the runoff had entered and discolored their pond.

14. On July 17, 2023, DEQ notified Respondent of the inspection results for the May 3, 2023, inspection and requested a written response addressing the violations be submitted by August 1, 2023. To date, Respondent has not submitted a written response to DEQ.

15. On August 1, 2023, DEQ received another complaint alleging that Respondent did not have environmental protectors installed to mitigate sediment-laden stormwater from leaving the site. Complainant stated that dirt was being hauled onto the site, and that runoff from the dirt had entered Dry Creek, slowing the flow of the creek. Complainant further stated that Respondent had

created several small dams within the creek, which had redirected the flow of runoff. Upon investigation, the complainant found that the Notice of Coverage (NOC) posted at the site did not have the correct address of the site.

16. On August 10, 2023, DEQ conducted a construction stormwater inspection of the site. The inspection revealed the following violations:

- a. Inspections were not being conducted at the frequency specified in the SWPPP. At the time of DEQ's inspection, the site had not been inspected since May 10, 2023. Failure to conduct inspections every seven (7) days, as specified in the SWPPP, is a violation of Part II.A.4.N of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Sediment had left the construction site, in violation of the Ark. Code Ann. § 8-4-217(a)(2) and Part II.A.4.J of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. At the time of the inspection, there was no silt fencing installed to mitigate stormwater runoff, though the site map indicated silt fencing was installed. The site map must be reflective of the current conditions of the construction site. Failure to revise the site map to reflect the current conditions of the site is a violation of Part II.A.3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Evidence of continued in-stream activity at the unnamed tributary of Dry Creek was observed. DEQ Inspectors had referred the activity to the U.S. Army Corps of Engineers – Vicksburg (USACE) after the May 3, 2023, inspection. The USACE had instructed Respondent to remove the rock check dams placed within the tributary. However, at the time of the inspection, the dams were still present.

17. On September 21, 2023, DEQ notified Respondent of the results of the August 10, 2023, inspection and requested a written response to the violations be submitted by October 6, 2023.
18. On September 25, 2023, Respondent submitted photographic documentation showing that the dams in Dry Creek had been removed.
19. On October 17, 2023, DEQ again requested a written response to the May 23, 2023, and August 10, 2023, inspections.
20. On October 30, 2023, Respondent submitted an updated site map and a copy of the latest site inspection report to DEQ. Respondent did not submit a written response.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with all Permit requirements.
2. Respondent shall provide a written response to the May 3, 2023, and August 10, 2023, inspections, along with photographic documentation, demonstrating that corrective actions have been taken to address the cited violations and that appropriate BMPs have been installed and maintained.
3. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter for a period lasting until this Order is closed or until the Permit has been terminated by DEQ, whichever occurs first, Respondent shall submit monthly progress reports documenting the ongoing good housekeeping and all corrective actions taken to ensure silt and sediment are not leaving the site. The progress reports shall also include copies of the site inspections and photographs documenting properly installed and maintained BMPs.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00). or one-half of the full civil penalty of Four Thousand Two Hundred Dollars (\$4200.00) 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. Even if the conditions for receiving a reduced penalty of Four Thousand Two Hundred Dollars (\$4200.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00) and shall become due immediately and payable 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.

5. 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 the 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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

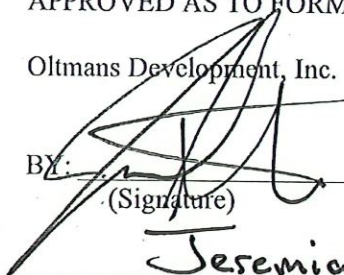
12. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 10 DAY OF December, 2024.

Bailey Taylor
BAILEY M. TAYLOR, CHIEF ADMINISTRATOR OF ENVIRONMENT AND DEQ DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Oltmans Development, Inc.

BY: 
(Signature)
Jeremiah Oltmans
(Typed or printed name)

TITLE: Owner

DATE: 12-9-24