

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Charles Browning Construction Co., Inc.
d/b/a Browning Redi-Mix Concrete Producer
P.O. Box 5035
Cabot, AR 72023

LIS No. 16- 102
Permit No. ARR000923
AFIN 73-01185

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.*, the regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC), and the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*

The issues herein having been settled by the agreement of the Charles Browning Construction Co., Inc. d/b/a Browning Redi-Mix Concrete Producer (Respondent) and the Arkansas Department of Environmental Quality (ADEQ or Department), 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 ready-mix concrete facility (facility) located at 6127 Hwy. South, Beebe, White County, Arkansas.
2. The Respondent discharges stormwater to an unnamed tributary, thence to Red Cut Slough, thence to Cypress Bayou, thence to Bayou Des Arc, thence to the White River in Segment 4D of the White River Basin.

3. This activity is regulated pursuant to the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. § 8-4-101 et seq.) and the Clean Water Act (33 U.S.C. § 1251 et seq.) and requires coverage by the National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit (IGP), Permit Number ARR000000.

4. Ark. Code Ann. § 8-4-217(a)(2) and (3) provide:

(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].

5. Ark. Code Ann. § 8-4-103 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.

6. Ark. Code Ann. § 8-6-205 (a)(3) provides in part:

(a) It shall be illegal for any person:

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the department.

7. On January 31, 2012, the Department conducted a routine compliance inspection of the facility. During the inspection it was determined wastewater from the washout of concrete trucks was reaching the waters of the State. Respondent did not have coverage under the applicable general permit for this discharge, and therefore the unpermitted discharge violated Ark. Code Ann. §§ 8-4-217(a)(3), 8-4-217(b)(1)(C), and 40 C.F.R. § 122.26(a), as incorporated by reference in Regulation 6.104(A)(3).

8. On February 28, 2012, the Department received from Respondent a Notice of Intent (NOI), initial permit fee, and Stormwater Pollution Prevention Plan (SWPPP) for coverage by IGP, Permit Number ARR000000. Respondent received coverage under IGP ARR000000 on March 8, 2012 with Permit Tracking Number ARR000923. This permit had an expiration date of June 30, 2014.

9. Pursuant to the authority granted by Ark. Code Ann. § 8-4-203, ADEQ renewed Respondent's coverage under IGP ARR000000 with Permit Tracking Number ARR000923 (the Permit) on June 12, 2014. This permit has an effective date of July 1, 2014 and expires on June 30, 2019.

10. On October 16 and 24, 2014, the Department conducted a routine compliance inspection of the facility. The inspection revealed the following violations:

- a. Industrial process water was discharged from the concrete washout area into an unnamed tributary of Red Cut Slough. That industrial process water was not discharged from the outfalls identified in the Permit. Respondent does not have a permit to discharge industrial process water to an area other than the outfalls described in Respondent's Permit. This unpermitted discharge violated Ark. Code Ann. §§ 8-4-217(a)(3), 8-4-217(b)(1)(C), and 40 C.F.R. § 122.26(a), as incorporated by reference in Regulation 6.104(A)(3).
- b. Concrete waste was improperly placed where it was likely to discharge to the waters of the state. This action violated Part 3.1.9 of the Permit and Ark. Code Ann. § 8-4-217(a)(2).

- c. Concrete waste was disposed at a disposal site that has no permit from the department. This action violated Ark. Code Ann. § 8-6-205 (a)(3).
- d. The Stormwater Pollution Prevention Plan (SWPPP) did not include a detailed and accurate facility description. This omission violated Part 4.2.3 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

11. On January 12, 2015, the Department notified Respondent of the results of the October 16, 2014, inspection requesting that a written response be submitted to ADEQ by January 27, 2015. On January 27, 2015, Respondent requested and received a deadline extension via e-mail until February 10, 2015.

12. On March 24, 2015, the Department received Respondent's response to the violations cited in the January 12, 2015 inspection report. That response did not adequately address the violations.

13. On November 25, 2015, ADEQ proposed a draft Consent Administrative Order to Respondent to resolve the violations cited herein.

14. On December 16, 2015, Respondent submitted a subsequent response to the January 12, 2015 inspection report that was deemed adequate by the Department.

15. On March 29, 2016, Respondent submitted a response to the draft proposed CAO with a site assessment and stormwater plan developed by a Professional Engineer.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease all unpermitted discharges of process water.

2. On or before the effective date of this Order, Respondent shall submit to the Browning Redi-Mix, CAO

Department a complete application for an individual NPDES permit including ADEQ Form 1, EPA Form 2C, and a Disclosure Statement to the Permits Branch, ADEQ Office of Water Quality, 5301 Northshore Drive, North Little Rock, AR 72118, and provide a copy of all submitted documents to the following:

Enforcement Branch, ADEQ Office of Water Quality
5301 Northshore Drive
North Little Rock, AR 72118

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a reduced civil penalty of One Thousand Five Hundred Dollars (\$1,500.00). Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

Arkansas Department of Environmental Quality
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, ADEQ shall be entitled to attorneys' fees and costs of collection.

4. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If the Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

- a. First day through 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

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of failure by the

Respondent to comply with the requirements of this Order.

5. If any event, including but not limited to an act of nature, occurs which 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 ADEQ, 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.

6. ADEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

7. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such

deficiencies. Failure to adequately respond to such Notice of Deficiency (NOD) within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

8. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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 Regulation No. 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.

9. Nothing in this Order shall be construed as a waiver by ADEQ 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 which is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

10. 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 15th DAY OF December, 2016.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Charles Browning Construction Co., Inc.
d/b/a Browning Redi-Mix Concrete Producer

BY: Shawn Browning
(Signature)

Shawn Browning
(Typed or printed name)

TITLE: President

DATE: 12-1-16