

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Thomas D.B. Collins LTD
Kensington Subdivision
39 Walnut Valley Drive
Little Rock, AR 72211

LIS No. 20- 160
Permit No. ARR155409
AFIN 63-01121

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 regulations and rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Thomas D.B. Collins LTD (Respondent) and the Division of Environmental Quality¹ (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 construction site ("site") located on the south side of Northlake Road, 3800 feet east of Zuber Road in Bryant, Saline County, Arkansas.
2. The site is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. 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).

4. 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 an NPDES permit.

5. 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 [DEQ].

6. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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.

7. 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.”

8. ADEQ issued Stormwater Construction General Permit, Permit Number ARR150000, on May 4, 2016 with an effective date of November 1, 2016, and an expiration date of October 31, 2021.

9. DEQ issued Stormwater Construction General Permit coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Stormwater Construction General Permit, Permit Tracking Number ARR155406 ("Permit") with a coverage date of October 19, 2016, and an expiration date of October 31, 2021.

10. On March 16, 2017, DEQ conducted a Construction Stormwater inspection of the site in response to a complaint. The inspection revealed the following violations:

- a. The Notice of Coverage (NOC) and Stormwater Pollution Prevention Plan (SWPPP) were not posted at the site entrance or visible to the public. This failure is a violation of Part II, Section A.2 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The SWPPP has not been updated to reflect the current disturbed acreage. The Notice of Intent (NOI), submitted on September 28, 2016, only showed 9.8 acres of the 39.75 acres to be disturbed, yet the disturbed area encompassed more than 10 acres. This is in violation of Part II, Section A.3 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Site stabilization, erosion, and stormwater controls were not installed or being implemented as described in the SWPPP. This is in violation of Part II, Section A.4.G of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Inspections were not being conducted in accordance with the Permit as demonstrated by:
 - i. Inspections did not state the location of any discharges of sediment/other pollutants;

- ii. Inspections did not list Best Management Practices (BMPs) that were in need of maintenance;
- iii. Inspections did not list areas where additional stormwater controls were needed; and
- iv. Inspections did not list the location of current on-site construction activities.

These conditions constitute a violation of Part II, Section A.4.L of the Permit and are therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- e. Respondent had not properly operated and maintained the site as required by the Permit as demonstrated by silt fences and check dams not properly installed and maintained. This condition violated Part II, Section B.17 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

- 11. On April 10, 2017, DEQ notified Respondent of the inspection results.
- 12. On May 1, 2017, May 8, 2017, and May 18, 2017, DEQ received responses addressing the violations cited in the March 16, 2017 inspection.
- 13. On June 15, 2017, DEQ notified Respondent the inspection responses failed to address adequately the violations detailed in the March 16, 2017 inspection report and requested a response be submitted by June 30, 2017.
- 14. On July 24, 2017, DEQ notified Respondent for a second time the inspection responses failed to address adequately the violations detailed in the March 16, 2017 inspection report and requested a response be submitted by August 7, 2017.
- 15. On August 7, 2017, Respondent submitted a response to the March 16, 2017 inspection.

16. On August 28, 2017, DEQ notified Respondent the response dated August 7, 2017, adequately addressed all the violations cited in the March 16, 2017 inspection report.
17. On December 29, 2017, DEQ conducted a Construction Stormwater inspection of the site in response to a complaint. The inspection revealed the following violations:
 - a. Stabilization methods, described in the SWPPP, were not implemented to the disturbed areas in a timely manner. This is a repeat violation of Part II, Section A.4.G.2.d of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
 - b. Velocity dissipation devices had not been installed at discharge points within concentrated flow areas serving more than two (2) acres as described in SWPPP and site map. This is a repeat violation of Part II, Section A.4.G.3.b of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
18. On January 11, 2018, DEQ notified Respondent of the December 29, 2017 inspection results and requested a response by January 26, 2018.
19. On February 20, 2018, DEQ requested, via certified letter, a response from Respondent to the December 29, 2017 inspection.
20. On April 5, 2018, DEQ notified Respondent, via certified letter, the case had been referred to DEQ's Office of Water Quality (OWQ) Enforcement Branch for further review.
21. On April 15, 2018, Respondent submitted a response to the December 29, 2017 inspection.
22. On April 23, 2018, DEQ requested additional information from Respondent, including photographic documentation and inspection reports for January and February 2018.

23. On May 8, 2018, Respondent submitted the additional information addressing the violations listed in the December 29, 2017 inspection. On June 29, 2018, DEQ notified Respondent that the May 8, 2018 submission adequately resolved the compliance issues documented in the December 29, 2017 inspection.

24. On October 28, 2019, DEQ conducted a construction stormwater inspection of the site in response to a complaint. The inspection revealed the following violations:

- a. The Notice of Coverage (NOC) and Stormwater Pollution Prevention Plan (SWPPP) were not posted at the site entrance or visible to the public. This failure is a violation of Part II, Section A.2 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent has not properly operated and maintained the site as required by the Permit as demonstrated by the improperly installed and maintained silt fences, check dams, sedimentation basins, and sediment traps. This condition violated Part II, Section B.17 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- c. The construction site entrance was not sufficiently stabilized to prevent off-site tracking. This is a violation of Part II, Section A.4.H.2 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

25. On December 12, 2019, DEQ notified Respondent of the inspection results and requested a written response the violations cited in the report. Respondent was also notified that the case had been referred to DEQ's OWQ Enforcement Branch.

26. On January 6, 2019, Respondent submitted a response to the inspection report stating that the entrance had been properly stabilized, silt fences were installed, and a new sedimentation basin spillway installed.

27. On February 5, 2020, DEQ notified Respondent the inspection response, dated January 6, 2020, did not sufficiently address the violations cited in the October 28, 2019 inspection.

28. Respondent has failed to pay the 2018 and 2019 stormwater construction permit fees associated with the Permit. The outstanding balance due for the 2018 Permit fee is Two Hundred Dollars (\$200.00) plus a late fee of Twenty Dollars (\$20.00) for total Permit fees owed of Two Hundred Twenty Dollars (\$220.00) for Invoice Number PDS-170836. The outstanding balance due for the 2019 Permit fee is Two Hundred Dollars (\$200.00) plus a late fee of Twenty Dollars (\$20.00) for total Permit fees owed of Two Hundred Twenty Dollars (\$220.00) for Invoice Number PDS-177165.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall pay the 2018 and 2019 Permit fees and late fees for Invoice Numbers PDS-170836 and PDS-177165 totaling Four Hundred Forty Dollars (\$440.00). Such payment of the Permit fees and late fees shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

2. Respondent shall operate the site in accordance with the terms and conditions of the Permit.

3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a revised SWPPP.

4. Respondent shall submit monthly progress reports to DEQ, by the 10th of the month for the previous month. Each monthly progress report shall document ongoing good housekeeping

and corrective actions taken to ensure silt and sediment are not leaving the site. The reports shall also include copies of the site inspections and photographs documenting best management practices. The monthly progress reports shall be submitted to DEQ for a period of one (1) year (totaling twelve (12) reports) or until the permit has been terminated, whichever occurs first.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Three Hundred Dollars (\$7300.00), or one-half of the full civil penalty of Three Thousand Six Hundred Fifty Dollars (\$3650.00) 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. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division 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, 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 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 Regulation No. 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 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.

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 9th DAY OF July, 2020.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Thomas D B Collins LTD
BY: Phillip Pengetly
(Signature)

Phillip Pengetly
(Typed or printed name)

TITLE: OWNER

DATE: 7/5/2020