

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Jones Digital, LLC
701 South Street, Suite 100
Mountain Home, Arkansas 72653

LIS No. 24- *061*
Permit No. Unpermitted
AFIN 01-00527

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the “Arkansas Act”), Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.* (the “Federal CWA”), and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

For the purpose of settling this matter and avoiding costly and uncertain litigation, Jones Digital, LLC (the “Respondent”), consents to the entry of this Order without admitting or denying the findings of fact and conclusions of law made herein, and in full and final settlement of all claims that could be brought against it on the basis of the facts set forth herein. The issues herein having been settled by the agreement of 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 Small Construction Site as defined in the National Pollutant Discharge Elimination System Stormwater Construction General Permit, Permit No. ARR150000 (“General Permit”) for a cryptocurrency mining facility (“Site”) located at 690 Highway 165

North, DeWitt, Arkansas County, Arkansas.

2. Stormwater from construction activities at the Site flows to Holt Branch, thence to Little La Grue Bayou, thence to La Grue Bayou.

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 to “navigable waters” 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 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. Ark. Code Ann. § 8-4-217(a)(2), (3) provides:

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

(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].

8. 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 rule or permit issued pursuant to the Act.

9. 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.”

10. On October 16, 2023, DEQ conducted a Reconnaissance Inspection of the Site. The inspection revealed the following violations:

- a. Respondent was operating a small construction site without coverage under the General Permit, in violation of the Arkansas Water and Air Pollution Control Act, specifically Ark Code Ann. § 8-4-217(b)(1)(C), and APC&EC Rule 6.203.

11. On October 30, 2023, Respondent emailed DEQ inquiring if coverage under the General Permit was necessary, as the site map they provided documented the Site as less than one (1) acre.

12. On November 1, 2023, DEQ notified Respondent via email that the Site’s construction activities were greater than one (1) acre, but less than five (5) acres, qualifying Respondent for permit coverage under the General Permit for small construction sites. DEQ provided information on how to obtain a Notice of Coverage (NOC) under the General Permit. Additionally, Respondent was to develop and implement Best Management Practices (BMPs) to mitigate sediment-laden stormwater from leaving the Site.

13. On November 7, 2023, Respondent submitted to DEQ a Stormwater Pollution Prevention Plan (SWPPP), including BMPs, and a corrected site map.

14. On November 9, 2023, DEQ conducted a Construction Stormwater Inspection of the Site. The inspection revealed the following alleged violations:

- a. A NOC and a copy of the SWPPP were posted at the entrance of the Site on November 8, 2023. The posted NOC indicated that construction activities began on September 28, 2023, and therefore the Site was considered unpermitted from September 28, 2023 through November 7, 2023. This is a violation of the

Arkansas Water and Air Pollution Control Act, specifically Ark Code Ann. § 8-4-217(b)(1)(C), and APC&EC Rule 6.203.

- b. The SWPPP indicated that silt fencing would be used as sediment control around the construction Site. However, at the time of the inspection, the silt fencing had not been installed all the way around the site, in violation of Part I, Section B, Condition 13.A of the General Permit, and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On November 15, 2023, DEQ notified Respondent of the results of the inspections that occurred on October 16, 2023 and November 9, 2023, and requested a written response to the inspections be submitted to DEQ by November 30, 2023.

16. On November 29, 2023, Respondent submitted written responses to the inspections.

17. The Respondent acknowledges the factual allegations made herein, but does not admit that it discharged pollutants in violation of the Arkansas Act or the Federal CWA.

ORDER AND AGREEMENT

WHEREFORE, in settlement of this matter, Respondent and DEQ now stipulate and agree as follows:

1. Respondent shall immediately comply with all General Permit requirements, and shall maintain satisfactory BMPs to mitigate and prevent sediment-laden stormwater from leaving the Site.

2. 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, 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.

3. Upon completion of construction activities at the Site and stabilization of disturbed areas as required by the General Permit, Respondent shall submit a Notice of Termination ("NOT") to the DEQ. This Order shall automatically close when DEQ sends Respondent written confirmation that Respondent's NOT meets the requirements of the General Permit.

4. In compromise and full settlement of the alleged violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Six Hundred Dollars (\$3,600.00), or one-half of the full civil penalty, i.e., One Thousand Eight Hundred Dollars (\$1,800.00), 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 One Thousand Eight Hundred Dollars (\$1,800.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Three Thousand Six Hundred Dollars (\$3,600.00) 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

5. 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.

6. 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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. By virtue of the signature appearing below, the individual represents that he or

she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

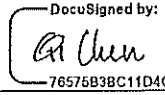
SO ORDERED THIS 5th DAY OF April,
2024.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Jones Digital, LLC

BY:  _____
(Signature)

Qimin "Jimmy" Chen, Managing Director

DATE: 4/3/2024