

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 88-00881

LIS No. 20-177

SOUTHEAST GRAVEL COMPANY, INC.  
10529 STATE HIGHWAY 54 EAST  
STAR CITY, ARKANSAS 71667

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, APC&EC Regulation 18, and APC&EC Regulation 19.

The issues herein having been settled by agreement of Southeast Gravel Company, Inc. (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. Respondent owns and operates a rock crushing facility located at 10529 State Highway 54 East in Star City, Lincoln County, Arkansas.
2. Ark. Code Ann. § 8-4-217(a)(3) provides:

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<sup>1</sup>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 Arkansas Department of Energy and Environment.

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

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(3) Violate any provisions of this chapter or of any rule or order adopted by the Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Division of Environmental Quality;

3. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 8-4-304, “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

5. DEQ granted Respondent coverage under the Minor Source General Air Permit for Rock Crushing Facilities 1916-AGP-000 on December 6, 2004. Respondent was issued permit tracking number 1916-AGP-049.

6. The Minor Source General Air Permit for Rock Crushing Facilities 1916-AGP-000 expired on September 4, 2012.

7. On July 27, 2015, DEQ received a Notice of Intent (NOI) from Respondent for renewal of the Minor Source General Air Permit for Rock Crushing Facilities 1916-AGP-000. On the NOI, item #14, Respondent indicated that the engines over 500 HP at the facility would not use an oxidation catalyst or CEMS to comply with ZZZZ, thus making the Respondent’s facility ineligible for a General Permit.

8. In correspondences dated February 1, 2016, and March 29, 2016, DEQ informed

Respondent that coverage under the Minor Source General Air Permit for Rock Crushing Facilities 1916-AGP-000 had expired and that Southeast Gravel may be subject to an enforcement action if the facility was operated without an active Air Permit.

9. Respondent's facility is subject to 40 C.F.R. Part 60, Subpart OOO – Standards of Performance for Nonmetallic Mineral Processing Plants. Arkansas Pollution Control and Ecology Commission's Regulation 18.301(B)(3) requires facilities that are subject to the requirements of 40 C.F.R. Part 60, Subpart OOO as of June 2008, to obtain a permit.

10. On October 24, 2019, DEQ personnel conducted a full compliance inspection of Respondent's facility. The inspection covered the reporting period of March 2016 through September 2019.

11. During the inspection, it was discovered that Respondent was operating the Rock Crushing facility without an air permit. Records reviewed indicated that Respondent had been operating the facility without an air permit since March 29, 2016. Such act violates the APC&EC Regulation 18.301(B)(3).

12. In a letter dated November 25, 2019, DEQ informed Respondent of the compliance issues identified in the inspection conducted on October 24, 2019. This letter was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

13. To date, Respondent has not responded to the November 25, 2019 letter.

14. On February 5, 2020, DEQ sent Respondent a formal enforcement letter for the compliance issues discovered during the October 24, 2019 inspection.

15. To date, Respondent has not responded to the February 5, 2020 letter.

16. On February 13, 2020, Respondent submitted a NOI for coverage under the Minor Source General Permit for Rock Crushing Facilities, Permit Number 1916-AGP-000.

17. On March 9, 2020, DEQ granted Respondent coverage under the Minor Source General Permit for Rock Crushing Facilities, Permit Number 1916-AGP-000. Respondent was issued Permit Tracking Number 1916-AGP-049.

### ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and DEQ do hereby agree and stipulate as follows:

1. This CAO addresses all violations contained in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **TWELVE THOUSAND THREE HUNDRED TWENTY DOLLARS (\$12,320.00)**, or one-half of the penalty, **SIX THOUSAND ONE HUNDRED SIXTY DOLLARS (\$6,160.00)** if this CAO is signed and returned to Air Enforcement Section, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **August 1, 2020**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs associated with collection.

3. All applicable submissions required by this CAO are subject to approval by DEQ.

In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

4. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to DEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of DEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

5. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall 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 have passed. 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. DEQ may grant an extension of any provision of this CAO, 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 DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

7. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.

8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

9. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws. Except as specifically provided herein, nothing contained in this CAO shall be deemed in any way to relieve Respondent of responsibilities contained in the permit.

10. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement

authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor relieves Respondent of the responsibilities for obtaining any necessary permits.

11. 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 CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to that individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 8th DAY OF October, 2020.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:  
  
SOUTHEAST GRAVEL COMPANY, INC.

BY: Teresa Williams (Signature)

Teresa Williams (Typed or printed name)

TITLE: Owner

DATE: 9-14-20