

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**LLOYD THURMAN AND  
BETTY THURMAN  
12905 ROSE CEMETERY RD  
PRAIRIE GROVE, ARKANSAS 71822**

**LIS 18-017  
AFIN: 72-02307**

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority of the Arkansas Open Cut Land Reclamation Act (the Act), Ark. Code Ann. § 15-57-301 *et seq.* and the regulations promulgated by the Arkansas Pollution Control and Ecology Commission (APC&EC) including, but not limited to, Regulation No. 15: the Arkansas Open Cut Mining and Land Reclamation Regulation; Regulation No. 8: Administrative Procedures; and Regulation No. 7: Civil Penalties.

The issues herein having been settled by agreement of Lloyd Thurman and Betty Thurman (“Respondents”) and the Director of 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. Respondents are the owners of property located north of 12905 Rose Cemetery Road, Prairie Grove, Washington County, Arkansas (“the Site”).

2. Ark. Code Ann. § 15-57-304(a)(1) and (2) state the following:
  - a. It shall be unlawful for any person to:
    - (1) Violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality issued pursuant to this subchapter; [or]
    - (2) Engage in open-cut mining without a permit issued pursuant to this subchapter;
3. APC&EC Reg.15.502 (B)(2) states, “It shall be unlawful for any person to: (2) Engage in open-cut or stream bed mining without a permit issued pursuant to the Act or this Regulation.”
4. On September 20, 2016, ADEQ received a complaint that Respondents were conducting open-cut mining operations at the Site. In particular, Respondents were mining red dirt and selling it without having obtained an open-cut mining permit.
5. On September 21, 2016, an ADEQ inspector conducted an investigation at the Site and determined that Respondents are engaging in open-cut mining operations without having obtained an open-cut mining permit. This act is a violation of APC&EC Reg.15.502 (B)(2) and Ark. Code Ann. § 15-57-304(a)(1) and (2).
6. Respondents were offered, but refused to accept, the open-cut mining permit application during the inspection on September 21, 2016. Respondents stated they would stop the mining operation and reclaim the Site to its natural landscape.
7. ADEQ mailed a certified letter, dated September 23, 2016, to Respondent Lloyd Thurman. This letter included a copy of the inspection report and an open-cut mining permit application. Respondent received this letter on September 30, 2016.
8. The ADEQ inspector conducted a follow-up investigation on November 1, 2016, to determine if Respondents were reclaiming the Site to its natural landscape. Heavy operating equipment was present at the Site, but no signs of reclamation work were evident.

9. On November 22, 2016, ADEQ received another complaint stating that Respondents were continuing to engage in open-cut mining operations without having obtained an open-cut mining permit. This act is a violation of Ark. Code Ann. § 15-57-304(a)(1) and (2).
10. Ark. Code Ann. § 15-57-305(a)(4), authorizes ADEQ to do the following:
  - (4) To assess civil penalties for violations of this subchapter or of any order, rule, regulation, permit, or reclamation plan issued pursuant thereto in an amount not to exceed:
    - (a) One thousand dollars (\$1,000) for the first violation;
    - (b) Two thousand five hundred dollars (\$2,500) for a second separate violation of the same offense within two (2) years; and
    - (c) Five thousand dollars (\$5,000) for a third separate or subsequent violation of the same offense within two (2) years;
11. Pursuant to Ark. Code Ann. § 15-57-304(b), “For the purposes of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.”
12. Pursuant to Ark. Code Ann. § 15-57-305(b)(3), “The amount of the administrative civil penalty shall be determined in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission, including, but not limited to, the regulations on civil penalties.”
13. As of January 24, 2017, Respondents have failed to return the open-cut mining permit application.

### **ORDER AND AGREEMENT**

WHEREFORE, Respondents and ADEQ do hereby stipulate and agree:

1. Respondents shall immediately cease commercial mining operations at the Site.
2. Upon the effective date of this order, Respondents shall begin reclamation of the affected area at the Site. Additional material may be removed in order to shape the pond area into the

configuration that the Respondents desire. The highwall of the pond next to the entrance road will not be required to be sloped if a five strand wire fence or other similar barrier is installed between the highwall and entrance road for safety purposes.

3. Respondents shall complete the grading of the remaining slopes into the pond to a slope of no greater than one (1) vertical to three (3) horizontal and any stored soil is to be placed above the estimated high water level of the completed pond as required by APC&EC Reg.15.402 (D) within 180 days after the effective date of this order.
4. Respondents shall complete the revegetation of the graded and soil replaced areas to the standard of seventy percent (70%) coverage as stated in APC&EC Reg.15.308 (F) within one (1) year of the effective date of this order.
5. Failure to meet the time frames for grading, soil replacement and revegetation shall invoke the civil penalties section of this order until each of the steps has been completed.
6. In compromise and full settlement of the violations specified in paragraph 3 of the Findings of Fact, Respondents agree to pay a penalty in the amount of **SEVEN HUNDRED FIFTY DOLLARS AND ZERO CENTS (\$750.00)**, if this CAO is signed and returned to Katie LeBoeuf, Enforcement, Office of Land Resources, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:30 p.m. on February 1, 2018. Payment is due within thirty (30) calendar days of the effective date of this CAO. Payment shall be made to ADEQ, Attention: Fiscal Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317. In the event that Respondents fail to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection, as well as all other lawful fees and penalties.

7. If Respondents fail to meet any requirements of this CAO within the applicable deadline established in this CAO, the Respondents consent and agree to pay, on demand, to ADEQ civil 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 the failure of Respondents to comply with the requirements of this CAO.

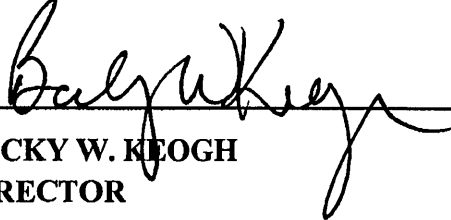
8. If any event, including, but not limited to natural disasters, occurs which causes or may cause delay in achievement of compliance by Respondents with the requirements or deadlines created by this CAO, it shall be the responsibility of Respondents to notify ADEQ, in writing, as soon as reasonably possible after it is apparent delay will result, but in no case after the due dates specified above. This notification shall describe in detail the anticipated length of the delay and the precise cause of the delay.

9. ADEQ may grant an extension of any provisions of this CAO, provided that Respondents request such an extension in writing and provided that the delay or anticipated delay has been or will be caused by circumstances beyond the control of and without the fault of Respondents. 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 fault of Respondents and the length of delay attributable to such circumstances shall rest with Respondents. Failure to notify ADEQ promptly, as provided in the preceding paragraph, may be grounds for denying an extension.

10. This CAO is subject to public review and comment in accordance with APC&EC Reg.8.407 and is therefore not final until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.
11. 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 CAO is granted by the Commission. Nothing in the CAO shall be construed as a waiver by ADEQ of its enforcement authority over violations not specifically addressed herein. Also, this CAO does not purport in any way to relieve Respondents of their responsibility for obtaining any necessary permits; nor does it exonerate Respondents from any past, present, or future conduct which is not expressly addressed herein.


12. Each of the undersigned individuals certifies that he or she is authorized to execute this CAO and to legally bind themselves to its terms and conditions.

SO ORDERED THIS 21 DAY OF February 2018.

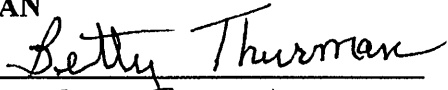
  
BECKY W. KEOGH  
DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

LLOYD THURMAN

BY: Signature   
Print Name Lloyd Thurman  
Date 1-22-18

BETTY THURMAN

BY: Signature   
Print Name Betty Thurman  
Date 1-22-18