



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Stormwater/Construction Enforcement: Arkansas Department of Environmental Quality and Faulkner County Developer Enter into Consent Administrative Order

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The Arkansas Department of Environmental Quality ("ADEQ") and Tri.Con.Builders, Inc. ("TCBI") entered into a September 8th Consent Administrative Order ("CAO") addressing alleged violations of a National Pollution Discharge Elimination System ("NPDES") Stormwater Construction General Permit. See LIS No. 17-058.

The CAO provides that TCBI is developing a subdivision ("Subdivision") with 20 approximately three-acre lots located in Conway, Arkansas.

The TCBI Subdivision is stated to discharge stormwater runoff to Cypress Creek, subsequently to Cadron Creek, which is designated as an Extraordinary Resource Water, and eventually flowing into the Arkansas River.

TCBI is stated to have applied for coverage to operate a large construction site under the Arkansas NPDES Stormwater Construction General Permit No. ARR150000 ("Permit") on August 26th, 2015. Coverage was subsequently granted. A recertification Notice of Intent was stated to have been submitted by TCBI on May 9, 2016. The company was issued coverage under the renewal Permit on October 28, 2016.

ADEQ is stated to have conducted an inspection at the Subdivision in response to a complaint on October 6, 2015. The inspection allegedly revealed the following:

- Failure to maintain 25 feet of natural buffer between the bank of Cyprus Creek and the disturbed area
- The Stormwater Pollution Prevention Plan ("SWPPP") was not implemented as written
- There was no documentation of the required site inspections as designated in the SWPPP
- The SWPPP and Notice of Coverage ("NOC") were not available onsite.

These four items allegedly violated certain provisions of the Permit.

TCBI submitted a December 2, 2015 response to ADEQ's alleged violations of which two were stated to have not been addressed.

ADEQ is stated to have conducted a January 29, 2016 inspection of the Subdivision. The inspection allegedly revealed the following:

- Placement of an earth dam across Cypress Creek which caused a visibility increase in the turbidity of the waterbody
- Failure to maintain 25 feet of natural buffer between the bank of Cypress Creek and the disturbed area
- SWPPP was not been implemented as written
- No documentation of the required site inspections as designated in the SWPPP
- Section of the silt fence was not entrenched
- SWPPP not available onsite

These items allegedly violated certain provisions of the Permit.

ADEQ sent a letter notifying TCBI of the results of the previously referenced inspection. The company is stated to have responded on March 7, 2016. All violations were stated to have been addressed except submission of an updated SWPPP.

ADEQ is stated to have conducted an inspection of the Subdivision on November 17, 2016. The inspection allegedly revealed the following:

- Soil stabilization had not been initiated on the ditch slopes beside the completed subdivision roads
- Concrete washout water had been discharged and accumulated in a ditch near the entrance of the site
- SWPPP was not available onsite
- No documentation of required site inspections as designated in the SWPPP

These items allegedly violated certain provisions of the Permit.

The CAO requires that TCBI correct the alleged violations cited in certain paragraphs of the Findings of Fact. Further, a Corrective Action Plan Report documenting the corrective actions taken to correct the violations must be submitted to ADEQ. The required activities include submission of an updated SWPPP.

Monthly compliance reports must be submitted to ADEQ addressing site inspections and other activities required by the Permit.

A civil penalty of \$7,100 is assessed which could be reduced by one-half if the CAO was submitted to ADEQ prior to August 31st.

[A copy of the CAO can be downloaded here.](#)