

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Tri. Con. Builders, Inc.
2111 E. German Lane
Conway, AR 72032

LIS No. 17- 058
Permit Tracking No. ARR154956
AFIN 23-01214

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

The issues herein having been settled by the agreement of Tri. Con. Builders, Inc. (Respondent) and 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. Respondent is developing a subdivision with twenty (20) approximately three (3) acre lots known as North Woods Estates (the site) located on Highway 25 North off Highway 65, in Conway, Faulkner, Arkansas.
2. Respondent discharges stormwater runoff to Cyprus Creek, thence to Cadron Creek, which is designated as an Extraordinary Resource Water, thence to the Arkansas River.

3. Respondent is regulated 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 except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

5. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (the Act) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

6. Ark. Code Ann. § 8-4-217(a)(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].

7. 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 regulation or permit issued pursuant to the Act.

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

9. NPDES Stormwater Construction General Permit Number ARR150000 (Permit) became effective on November 1, 2011, and expired on October 31, 2016. NPDES Permit Number ARR150000 was renewed with an effective date of November 1, 2016 and an expiration date of October 31, 2021. Respondent applied for coverage to operate a large construction site under the Permit on August 26, 2015. Coverage was subsequently granted, and Permit Tracking Number

ARR154956 was issued to the Respondent on September 16, 2015. Respondent submitted a Recertification Notice of Intent on May 9, 2016. Respondent was issued coverage under the renewal Permit on October 28, 2016.

10. On October 6, 2015, ADEQ conducted an inspection at the site in response to a complaint. The inspection revealed the following

- a. Respondent failed to maintain twenty-five (25) feet of natural buffer between the bank of Cypress Creek and the disturbed area. The failure to maintain a buffer zone violated Part I, Section B.13 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. The Site Stormwater Pollution Prevention Plan (SWPPP) has not been implemented as written. The SWPPP states that erosion control Best Management Practices (BMPs), such as silt fences, rock check dams and hay bales, will be used to for initial site stabilization and that check dams, silt fences, berms, and vegetative buffers will be utilized as structural practices to limit runoff and the discharge of pollutants. There were no silt fences or check dams installed onsite. As noted above, the natural buffer between Cypress Creek and the disturbed area was not maintained. The failure to install structural stormwater controls and implement stabilization practices as documented in the SWPPP violated Part II, Section A. of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. There was no documentation of the required site inspections as designated in the SWPPP. The failure to document site inspections violated Part II,

Section A.4.L.3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

- d. The SWPPP and Notice of Coverage (NOC) were not available onsite. The failure to maintain the SWPPP and NOC onsite violated Part II, Section A.2 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

11. On December 2, 2015, ADEQ received Respondent's response to the violations cited in the inspection report dated October 12, 2015. The response did not address the violations listed in Paragraph 10(a) and (b) above.

12. On January 29, 2016, the Department conducted an inspection of the site. The inspection revealed the following violations:

- a. Respondent placed an earth dam across Cyprus Creek in order to aid in the installation of a box culvert. This in-stream activity caused a visible increase in the turbidity of Cypress Creek and violated APC&EC 2.503, and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent failed to maintain twenty-five (25) feet of natural buffer between the bank of Cypress Creek and the disturbed area. The failure to maintain a buffer zone violated Part I, Section B.13 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3). The failure to maintain twenty-five (25) feet of natural buffer between the bank of Cypress Creek and the disturbed area was also cited during the October 6, 2015 inspection.

- c. The SWPPP has not been implemented as written. The SWPPP states that erosion control BMP's, such as silt fences, rock check dams and hay bales, will be used to for initial site stabilization and that check dams, silt fences, berms, and vegetative buffers will be utilized as structural practices to limit runoff and the discharge of pollutants. No check dams were installed onsite and the silt fencing was poorly maintained. Also, the natural buffer between Cypress Creek and the disturbed area has been removed. The failure to install structural stormwater controls and implement stabilization practices as documented in the SWPPP violated Part II, Section A. of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3). The failure to install structural stormwater controls and implement stabilization practices was also cited during the October 6, 2015 inspection.
- d. There was no documentation of the required site inspections as designated in the SWPPP. The failure to document site inspections as designated in the SWPPP violated Part II, Section A.4.L.3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3). The failure to document site inspections was also cited during the October 6, 2015 inspection.
- e. Sections of the silt fence were not entrenched. The failure to properly maintain the silt fences violated Part II, Section B.17 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- f. The SWPPP was not available onsite. The failure to maintain the SWPPP onsite violated Part II, Section A.2 of the Permit and therefore violated

Ark. Code Ann. § 8-4-217(a)(3). The failure to maintain the SWPPP onsite was also cited during the October 6, 2015 inspection.

13. On February 10, 2016, ADEQ sent a letter notifying Respondent of the results of the inspection. On March 7, 2016, the Department received the Respondent's response to the inspection report. Respondent addressed the violations cited in the Inspection Notice, but did not submit an updated SWPPP as requested.

14. On November 17, 2016, the Department conducted an inspection of the site. The inspection revealed the following:

- a. Soil stabilization had not been initiated on the ditch slopes beside the completed subdivision roads. The failure to initiate stabilization of disturbed areas once soil disturbing activities have ceased violated Part I, Section B., Condition 13.B of the renewal Permit and therefore violated Ark. Code Ann § 8-4-217(a)(3).
- b. Concrete washout water had been discharged and accumulated in a ditch near the entrance of the site. The discharge of concrete waste violated Part I, Section B.13.E.1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3)
- c. The SWPPP was not available onsite. The failure to maintain the SWPPP onsite violated Part II, Section A.2 of the renewal Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3). The failure to maintain the SWPPP onsite was also cited during the October 6, 2015 and January 29, 2016 inspections.

- d. There was no documentation of the required site inspections as designated in the SWPPP. The failure to document site inspections as designated in the SWPPP violated Part II, Section A.4.L.1 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3). The failure to document site inspections was also cited during the October 6, 2015 and January 29, 2016 inspections.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall correct the violations cited in Paragraphs 10, 12, and 14 of the Findings of Fact.
2. On or before the effective date of this Order, Respondent shall submit a Corrective Action Report detailing and documenting the corrective actions taken to correct the violations cited above. The Corrective Action Report shall be certified in accordance with Part II, Section B.9.B of the Permit.
3. On or before the effective date of the Order, respondent shall submit an updated SWPPP to the Office of Water Quality- Enforcement Branch.
4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter for a period of twelve (12) months, Respondent will submit to the Enforcement Branch of the Office of Water Quality a monthly Compliance Report. The report shall include copies of the site inspections conducted during the previous month, photographic evidence and certification that all stormwater controls are properly installed, implemented, and maintained, and a summary of all actions taken to ensure compliance with the

Permit. The Compliance Reports shall be certified in accordance with Part II, Section B.9.B of the Permit.

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 One Hundred Dollars (\$7,100.00), or one half of the full civil penalty of Three Thousand Five Hundred Fifty Dollars (\$3,550.00) if this Order is signed and returned to the Office of Water Quality-Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317 prior to August 31, 2017. 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 Arkansas Department of Environmental Quality, and mailed to the attention of:

Arkansas Department 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, ADEQ 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 said Order. If Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

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|---|-------------------|
| 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 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 which 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 ADEQ, 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. ADEQ may grant an extension of any provision of this Order, 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 the ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All Respondent's actions and submissions required by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any

such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ 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. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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 ADEQ 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 which 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 CAO 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 8th DAY OF September, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

TRI. CON. BUILDERS, INC.

BY: Jim Hawks
(Signature)

Jim Hawks
(Typed or printed name)

TITLE: PRES

DATE: 8.23.17