

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Elite Investments, LLC
1211 West Court Street
Paragould, AR 72450

LIS No. 17- 013
Permit No. ARR154877
AFIN 28-00507

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (Order) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (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 the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the Elite Investments, LLC (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 operated a construction site, Paragould Fill (construction site), located at 3436 West Kings Highway, Paragould, Greene County, Arkansas.
2. This activity is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES) Stormwater Construction General Permit, Permit Number ARR150000, which was issued by ADEQ on October 31, 2011.

3. Ark. Code Ann. §§ 8-4-217(a)(1), (2) and (3) provides:

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

- (1) Cause pollution, as defined in § 8-4-102, of any waters of this state;
- (2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;
- (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].

4. Ark. Code Ann. §§ 8-4-217(b)(1)(C) and (E) provides:

- (C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;
- (E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

5. Pursuant to Ark. Code Ann. § 8-4-102, "pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters harmful, detrimental, or injurious to public health, safety, or welfare; to domestic, commercial, industrial, agricultural, recreational,

or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

6. Ark. Code Ann. § 8-4-103 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.

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

8. Pursuant to Ark. Code Ann. § 8-4-102, "Waters of the State" means all streams lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems drainage systems and all other bodies or accumulations of water, surface an underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

9. On May 8, 2015, an ADEQ Water Division District Field Inspector conducted a compliance inspection of the construction site in response to a complaint. Follow-up inspections were performed on May 12, 2015, and May 15, 2015. These inspections revealed the following violations:

- a. During the inspections of May 8, 2015, May 12, 2015 and May 15, 2015, Respondent was operating a large (greater than 5 acres) construction site without a permit for the discharge of stormwater associated with construction activity. This condition violated Ark. Code Ann. § 8-4-217(b)(1)(C) and (E).
- b. During the inspection on May 12, 2015, visibly turbid stormwater was observed flowing from the construction site into an unnamed

creek which ultimately discharged to 8 Mile Ditch and thence into the Saint Francis River. An ADEQ inspector collected water samples during the inspection. Turbidity standards for this unnamed creek in the Channel-Altered Delta are an All Flow Value of 250 Nephelometric Turbidity Units (NTU). ADEQ's May 12, 2015 sample was 10,500 NTU. This exceedance was a violation of APC&EC Reg. 2.503, which states "there shall be no distinctly visible increase in turbidity of receiving water attributable to municipal, industrial, agricultural other waste discharges or instream activities" This exceedance was also a violation of Ark. Code Ann.§ 8-4-217 (a)(1) and (3).

- c. During the inspections of May 12, 2015 and May 15, 2015, an ADEQ inspector observed multiple areas in the receiving stream where sediment had been deposited from the construction site.

This deposited sediment violated Ark. Code Ann.§ 8-4-217(a)(2).

10. The inspection reports for May 8, 12, and 15, indicate that Chris Robinson, a member of Elite Investments, LLC, was contacted during each inspection.

11. On June 8, 2015, ADEQ received Respondent's Notice of Intent for Discharge of Stormwater Associated with Large Construction Activity Authorized under NPDES General Permit ARR1500000 and Stormwater Pollution Prevention Plan (SWPPP). On July 8, 2015, pursuant to the authority granted by Ark. Code Ann. § 8-4-203, ADEQ granted Respondent coverage for this construction site under the General Permit

Number ARR150000 (Permit) and issued NPDES General Permit Tracking Number ARR154877. The permit expires on October 31, 2016.

12. On July 17, 2015, the Department conducted an inspection of the construction site and the following violations were noted:

- a. During the inspection of July 17, 2015, an ADEQ inspector observed that the sedimentation basin did not have capacity to handle a 10-year, 24-hour storm event and that the overall sizing and spillway design of the sedimentation basin was inadequate for the construction site. The drainage area for the construction site was estimated to be in excess of 14 acres. This condition violated Part II.A.4.G.3.a of the of the Permit and therefore violated Ark. Code Ann.§ 8-4-217 (a)(3).
- b. During the inspection of July 17, 2015, the Stormwater Pollution Prevention Plan (SWPPP) was not at the construction site. This omission is a violation of Part II.A.2.A of the Permit and therefore violates Ark. Code Ann.§ 8-4-217 (a)(3).

13. On August 21, 2015, ADEQ notified Respondent of the results from the July, 17, 2015 inspection.

14. On September 7, 2015, Respondent submitted a response to ADEQ regarding the July, 17, 2015 inspection. The response included an improved plan to impound and settle sediment before it could leave the construction site, clarification that the original SWPPP would be kept on the construction site, a revised SWPPP and sediment and erosion control plan stamped by a Professional Engineer, plans to reduce the drainage

area for the construction site which allows pond to be adequate for on-site drainage by diverting the offsite drainage from the construction site, and updating SWPPP coverage dates to reflect the actual construction start date.

15. On October 29, 2015, Permit ARR15477 was transferred to R.A. Wilson Enterprises.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. In compromise and full settlement of the violations specified in the Findings of Fact, the Respondent agrees to pay a civil penalty of Three Thousand Dollars (\$3,000.00). 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.

2. 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, Respondent consents and agrees to pay on demand to ADEQ 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

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.

3. 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.

4. 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

5. 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.

6. 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.

7. By virtue of the signature appearing below, the individual represents that he or she is 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 an 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 13 DAY OF February, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

ELITE INVESTMENTS, LLC

BY: Chris Robinsor - Member
(Signature)

Chris Robinsor - Member - Elite Investments, LLC
(Typed or printed name)

TITLE: Member

DATE: 2-7-17