

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Jiles Clay Smith d/b/a S & S Farms
2117 Miller County Road 53
Texarkana, AR 71854

LIS No. 18- 079
Permit Nos. 5189-W; ARR001224
AFIN 46-00639

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 the Jiles Clay Smith d/b/a S & S Farms (“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 authorized to land apply industrial waste and discharge stormwater associated with industrial activity at its facility (“facility”) located at 2177 Miller County Road 53, Texarkana, Miller County, Arkansas.
2. Respondent operates the facility pursuant to No Discharge Water Permit 5189-W (“No Discharge Permit”) issued to Respondent on October 29, 2013. The No Discharge Permit became effective on November 1, 2013, and expires on October 31, 2018.

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), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. ADEQ issued the NPDES Industrial Stormwater General Permit with an effective date of July 1, 2014, and an expiration date of June 30, 2019.

10. ADEQ issued Industrial Stormwater General Permit coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Industrial Stormwater

General Permit under Permit Tracking Number ARR001224 (“Stormwater Permit”) with a coverage date of July 1, 2014, and an expiration date of June 30, 2019.

11. On July 12, 2016, the Department conducted a Compliance Inspection of the facility. The inspection revealed the following:

- a. Respondent failed to submit the Annual Reports for 2013, 2014, and 2015. These failures violated Part II, Condition 16 of the No Discharge Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent failed to conduct the required waste and soil analysis since the effective date of the No Discharge Permit. This failure violated Part I of the No Discharge Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent added two (2) storage tanks for grease storage at the facility and has not updated the Storm Water Pollution Prevention Plan to reflect the addition. This failure is a violation of Part 4, Condition 2.3.12 of the Stormwater Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. The two (2) grease storage tanks referenced in Paragraph 11.c above are located outside the secondary containment area, and Respondent has not taken proper measures to minimize exposure of grease to stormwater. Spilled grease from loading and unloading operations was observed on the ground around the tanks, and grease from a leaking valve was also observed on the ground. These conditions are a violation of Part 3, Condition 3.1.1 through 3.1.4 of the Stormwater Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On August 15, 2016, the Department notified Respondent of the inspection results and requested a written response to the violations cited in the inspection report be submitted to the Department by August 29, 2016. Respondent failed to respond to the notice by August 29, 2016.
13. On September 19, 2016, the Department sent a second notification of the inspection results and requested a written response to the violations cited in the inspection report be submitted to the Department by September 27, 2016. Respondent failed to respond to the notice by September 27, 2016.
14. On October 13, 2016, Respondent submitted soil sample analysis results to the Department.
15. On October 26, 2016, Respondent submitted waste sample analysis results to the Department.
16. On February 13, 2017, the Department sent a notice to Respondent stating that the Department had not received all of the required documentation and that this facility would be referred to the Enforcement Branch.
17. On October 31, 2017, and January 29, 2018, Respondent was notified that the No Discharge Permit would expire on October 31, 2018, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2018.
18. On May 2, 2018, Respondent emailed ADEQ and requested a thirty (30) day extension to submit a permit renewal application. ADEQ approved Respondent's request on May 8, 2018, and granted an extension to June 2, 2018. The Department received Respondents renewal application on June 1, 2018.

19. Respondent failed to submit the Annual Reports for 2016 and 2017. These failures violated Part II, Condition 16 of the No Discharge Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall henceforth conduct all required sampling and submit all annual reports in accordance with the No Discharge Permit.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit Annual Reports for 2013, 2014, 2015, 2016, and 2017.
3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall update the Stormwater Pollution Prevention Plan to reflect the addition of the grease storage tanks referenced in Finding of Fact Paragraph 11.
4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to ADEQ photographs depicting there is adequate the secondary containment area to encompass the grease storage tanks or move the tanks to the existing secondary containment area. The Respondent shall also remediate the area where spilled grease was observed.
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eighteen Thousand Nine Hundred Fifty Dollars (\$18,950.00) or one half of the full civil penalty, Nine Thousand Four Hundred Seventy-five Dollars (\$9,475.00), if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Even if the conditions for receiving a reduced penalty of Nine Thousand Four Hundred Seventy-five Dollars (\$9,475.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of

Eighteen Thousand Nine Hundred Fifty Dollars (\$18,950.00). 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:

ADEQ, 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, 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 that 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 that 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 if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements 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. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 31 DAY OF August, 2018.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Jiles Clay Smith d/b/a S & S Farms

BY: Jiles Clay Smith
(Signature)

Jiles CLAY Smith
(Typed or printed name)

TITLE: Owner

DATE: 8-23-18