Stormwater Enforcement: Arkansas Department of Energy and Environment-Division of Environmental Quality and Saline County Construction Site Operator Enter into Consent Administrative Order

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The Arkansas Department of Energy and Environment – Division of Environmental Quality ("DEQ") and Wise & Nelson Properties, LLC ("W&N") entered into an April 28th Consent Administrative Order ("CAO") addressing alleged violations regarding the Clean Water Act Stormwater provisions. See LIS No. 21-030.

The CAO provides that W&N operates a large construction site ("Facility") in Paron, Arkansas.

The Facility is stated to be regulated pursuant to the Clean Water Act National Pollution Discharge Elimination System ("NPDES").

DEQ is stated to have received a complaint on August 12, 2020, stating that construction activities (i.e., excavation at the Facility) had been initiated. Further, the complaint is stated to have indicated that sediment-laden runoff was running into the North Fork of the Saline River.

DEQ is stated to have conducted a stormwater inspection of the Facility on August 31, 2020, and allegedly identified the following violations:

- Construction activities had occurred at the Facility and the construction activities are part of a larger plan of development at the Facility that will result in over five (5) acres of disturbed soil. Respondent had not applied for nor been issued coverage under the NPDES Stormwater Construction General Permit ("SCGP"). Failure to obtain coverage under and comply with the SCGP is a violation of the Act and the Clean Water Act. Respondent's construction activities at the Facility fall within the definition of a Large Construction Site as set forth in APC&EC Rule 6. 103 and Part 1 Section A of the SCGP. W&N is operating a large construction site without a permit for the discharge of stormwater associated with construction activity. This unpermitted discharge without W&N first obtaining a stormwater permit is a violation of Ark. Code Ann. § 8-4-217(b)(1)(C) and is therefore a violation of Ark. Code Ann. 8-4-217(a)(3).

- W&N performed in-stream activities by installing a culvert in an unnamed tributary of North Fork of the Saline River without having been issued a Short Term Activity Authorization ("STAA") from DEQ. W&N's failure to obtain a STAA before beginning in-stream activities is in violation of APC&EC Rule 2.305 and therefore in violation of Ark. Code Ann. 8-4-217(a)(3).

DEQ is stated to have notified W&N regarding the alleged violations to which the company eventually responded on December 19, 2020. The response is stated to have indicated:

- No work has taken place on the site within six (6) to eight (8) months:
- An engineer has been preparing a Notice of Intent ("NOI") and Stormwater Pollution Prevention Plan ("SWPPP") for submittal;
- Rock checks have been put in place:
- The five gallon buckets have been properly disposed of; and
- Respondent will buy a mailbox to contain the SWPPP and a rain gauge.

DEQ is stated to have notified W&N on December 21, 2020, that the inspection response received did not sufficiently address the alleged violations in the inspection report. Photo documentation was requested and in addition monthly progress reports.

W&N submitted a NOI and SWPPP on December 29, 2020. Further, photo documentation of the site and SWPPP, mailbox and rain gauge were provided on January 19th. Site inspection reports were submitted on January 21st.

DEQ notified W&N on January 22, 2021, that an individual NPDES permit will be required for the construction site, citing 40 C.F.R. 122.28(b)(3).

The CAO requires that on or before the effective date of the CAO that W&N submit a complete application for an individual NPDES permit, SWPPP, and associated permit fees for the Facility. In addition, W&N is required to obtain a STAA for any in-stream activities conducted at the Facility.

W&N is required to, on or before the 15th day of the month following the effective date of the CAO and thereafter for a period of six months, then each quarter thereafter for a period 18 months or until the permit is terminated, submit progress reports regarding efforts to comply with the SCGP and the state of stabilization throughout all areas disturbed by the project. The progress reports must contain certain information.

A civil penalty of $3,000 is assessed which could have been reduced to $1,500 if the CAO was signed and returned to DEQ within 30 calendar dates of its receipt.

A copy of the CAO can be downloaded here.