Wastewater Enforcement: Arkansas Department of Energy & Environment - Division of Environmental Quality and Hampton Mining Facility Enter into Consent Administrative Order



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The Arkansas Department of Energy & Environment – Division of Environmental Quality ("DEQ") and Arkansas Gravel Co., Inc. ("AGCI") entered into a November 3rd Consent Administrative Order ("CAO") addressing alleged violations of the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit. See LIS No. 22-109.

The CAO provides that AGCI operates a mining facility ("Facility") in Hampton, Arkansas.

The Facility is stated to discharge treated process wastewater to an unnamed tributary that eventually flows to the Ouachita River. Such discharge is regulated pursuant to an NPDES permit. The NPDES permit is described as General Permit Number ARG500000 for Aggregate Facilities.

The CAO references DEQ's filing of a Notice of Violation to AGCI in 2017 to which the company did not file a request for hearing on the allegations.

DEQ conducted a routine compliance evaluation inspection of the Facility on August 25, 2017. The inspection is stated to have revealed the following violations:

1. An unpermitted discharge of process water was observed exiting the facility from an overflow of their containment pond and causing pollution of waters of the state.
2. Respondent added to the permitted facility by increasing mining operations without first providing notice and the plans and specification to DEQ for review and approval prior to those planned physical alterations or additions to the permitted facility as required by Condition 6.1 of Permit ARG500029.

AGCI is stated to have submitted a Notification of Intent that proposed to remove Outfall 002 and modify the treatment ponds to bring those ponds into compliance with the NPDES permit ("pond rehabilitation project"). Such Notification was submitted on January 5, 2018.

AGCI is stated to have reported two levee breaches in 2018 resulting in unpermitted discharges of process water that exited the Facility causing pollution of waters of the state.

DEQ is stated to have approved the pond rehabilitation project and issued a new Notice of Coverage for Permit ARG500029 on February 15, 2018. This authorized AGCI to implement its pond rehabilitation project.

DEQ conducted a routine compliance evaluation inspection of the Facility on March 8, 2018, which is stated to have indicated the following violation:

1. An unpermitted discharge of turbid water from a levee breach at pond 4A was observed exiting the facility and causing pollution to waters of the state.

DEQ notified AGCI of the inspection results on March 20, 2018, to which the company submitted a response on April 6, 2018.

AGCI notified DEQ of a levee breach at the Facility on April 25, 2018. The company informed DEQ that the breach was repaired on the same date. Further, AGCI is stated to have informed DEQ on May 17, 2018, that the repairs necessary to address the referenced levee breach on Pond 4 constituted the bulk of the progress on its pond rehabilitation project during the end of April. DEQ granted an extension until October 12, 2018, to complete the pond rehabilitation project following several months of biweekly progress reports.

DEQ conducted a routine compliance evaluation inspection of the Facility on December 31, which indicated the following:

1. A DEQ Inspector observed a discharge occurring from an unpermitted outfall.
2. A DEQ Inspector observed a discharge occurring from permitted Outfall 001.
3. A DEQ Inspector also observed water flowing from a wooded area south of Pond 4.

DEQ notified AGCI of the inspection results, to which the company responded.

A follow-up compliance inspection to determine the presence of a discharge from the Facility was conducted on several dates in 2019. A discharge is stated to have been observed occurring at Outfall 001 during the inspections.

The CAO references a Discharge Monitoring Report ("DMR") submitted for certain dates indicating no discharge indicator (NODI 4) for all parameters. DMRs for December 1 through December 31, 2018, and January 1 through January 31, 2019, reporting periods indicated no discharge had occurred from the Facility. DEQ is stated to have observed discharge during both of these monitoring periods. The CAO alleges that AGCI made a false statement or certification in its DMRs for December 2018 and January 2019.

AGCI submitted a request for a permit modification to add the unpermitted outfall on March 7, 2019. DEQ contacted AGCI concerning the January and February 2019 DMRs submissions. AGCI subsequently corrected the DMR for the January 2019 reporting period to Analysis not Conducted/No Sample.

AGCI submitted a DMR for the February 2019 reporting period indicating Analysis not Conducted/No Sample.

AGCI submitted a final engineering report on actions taken to resolve the levee breach on May 23, 2019. The final report is stated to have included an unpermitted outfall not approved by DEQ or constructed in accordance with any designs and specifications approved by the agency.

AGCI's DMR for the reporting period ending on October 31, 2019, reported a violation of the permitted effluent limit for total suspended solids. Further, the DMR for the monitoring period ending on January 31, 2020, contained a report of violations of the permitted effluent limits for total suspended solids.

DEQ is stated to have reviewed AGCI's DMRs for the monthly monitoring periods from January 1, 2018, to August 31, 2021, which revealed the following:

1. On Respondent's DMR for the monitoring period ending on January 31, 2021, Respondent reported a violation of the permitted effluent limit for TSS.
2. From January 1, 2018, to December 31, 2018, Respondent reported "No Discharge" for each monthly monitoring period, except February 2018.
3. From January l, 2019, to August 31, 2021, Respondent reported discharges for each monthly monitoring period.

The CAO requires that AGCI submit a certification that the Facility is in compliance with all effluent limits, reporting requirements, and sampling requirements of the applicable permit. If such a certification is submitted, then AGCI is not required to submit a Corrective Action Plan ("CAP") and report on its progress as required by subsequent paragraphs. However, if AGCI is unable to certify compliance with all effluent limits, reporting requirements, and sampling requirements of the permit, then within 30 calendar days of the effective date of the CAO it must submit to DEQ for review and approval a comprehensive CAP developed by an Arkansas Professional Engineer which shall include a reasonable milestone schedule with a date of final compliance. These items shall be fully enforceable as terms of the CAO once approved by DEQ. Further, monthly monitoring reports are required.

The CAO also requires that on or before the effective date of the CAO that AGCI submit to DEQ individual certifications from the Responsible Official and each Cognizant Official stating that the individual has read the permit and is aware of the requirements of the permit. This is required for any new Responsible Official or Cognizant Official for the term of the permit.

AGCI is also required to provide DEQ with copies of lab results, including chain of custody for each sample, and in addition include with its DMRs a daily log that reports certain information as specified in the CAO. In addition, within 30 calendar days of the effective date of the CAO, AGCI is required to submit to DEQ a certification that the areas where silt and sediment have left the Facility have been remediated.

The CAO assesses a civil penalty of $6,400 related to the previously referenced Notice of Violation. In addition, a civil penalty of $45,000 is assessed for the alleged violations specified by the CAO.

A copy of the CAO can be downloaded here.