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

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The Arkansas Department of Energy & Environment - Division of Environmental Quality ("DEQ") and Countryside Land & Cattle Co., LLC ("Countryside") entered into a November 21st Consent Administrative Order ("CAO") addressing alleged violations of the Clean Water Act regulations addressing stormwater discharges. See LIS No. 23-093.

The CAO provides that Countryside operates a large construction site ("Site") in Conway County, Arkansas.

Countryside is stated to have discharged stormwater to an unnamed tributary of East Fork Point Remove Creek which eventually flows to the Arkansas River. This discharge is stated to be subject to a National Pollutant Discharge Elimination System ("NPDES") permit.

DEQ is stated to have conducted a reconnaissance inspection of the Site on May 10, 2020. The inspection is stated to have identified the following:

1. Respondent had begun construction activities, including an entrance road, for a subdivision site for a planned forty-two (42) tracts. DEQ observed several areas disturbed by construction activities and an outfall from the site that entered a tributary to a neighboring pond. DEQ also observed signs indicating the locations of tracts for sale.
2. Respondent had not submitted a Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and paid the permit fee to DEQ Office of Water Quality Permits Branch, all of which are required to obtain permit coverage under the General Permit.
3. Respondent had not posted a Notice of Intent (NOI), developed a SWPPP, or complied with the permit conditions set forth in the General Permit as required for construction activities that disturb more than one (1) acre.
4. Respondent's failure to take any action to obtain permit coverage or otherwise comply with the rules that regulate stormwater discharges associated with construction activity is a violation of Ark. Code Ann. § 8-4-21 (b).

DEQ is stated to have notified Countryside of the inspection results to which it requested an extension of the due date for a response. The extension request was granted.

Countryside is stated to have submitted to DEQ documents including a Stormwater Pollution Prevention Plan ("SWPPP") on July 28, 2022. Further, on July 29, 2022, a response was submitted regarding the inspection report indicating that Countryside had retained assistance for developing a SWPPP and submission of the Notice of Intent ("NOI") for obtaining permit coverage and implementing best management practices ("BMPs").

DEQ issued a Notice of Coverage ("NOC") to Countryside on September 2, 2022. Further, on December 14, 2022, DEQ requested that Countryside submit plans, design, dimensions, specifications, and volume for the required sediment basin. It also requested details for the outlet structure. These documents were requested within 10 business days of the receipt of the letter. DEQ is stated to have not received a response.

DEQ conducted a stormwater inspection of the Site on January 20th. The inspection is stated to have identified the following violations:

- NOC was not posted at the Site entrance.
- Disturbed areas along the Site roads, on slopes, and where activity has ceased for more than 14 days that must be stabilized.
- Site has no sediment basin.
- None of the Site inspection forms within the SWPPP mailbox have been completed and it appears that no Site inspection had been conducted.
- No rain gauge was located on the Site.
- Sediment has accumulated to greater than 50% of check dam height at the majority of check dams in the steep sloped portions of the Site Roads.

Countryside is stated to have submitted a response to the inspection to DEQ which included photographs addressing most of the items in the inspection. However, Countryside is stated to have not submitted plans, design, dimensions, specifications, and volume for the required sediment basin, along with the details for the outlet structure, requested in the December 14, 2022, letter.

The CAO requires that Countryside comply with the NPDES Construction General Permit. Further, on or before the effective date of the CAO, Countryside is required to submit to DEQ the plans, design, dimensions, specifications, and volume for the required sediment basin, along with details for the outlet structure, as requested in the December 14, 2022, DEQ letter.

The CAO also requires within 30 calendar days of its effective date that Countryside submit to DEQ a revised SWPPP that contains the BMPs utilized at the Site and a revised Site map. Further, periodic progress reports are required.

A civil penalty of $6,400 is assessed which could have been reduced to $3,200 if the document was signed and returned to DEQ within 20 calendar days of its receipt.

A copy of the CAO can be downloaded here.