Stormwater Enforcement: Arkansas Department of Energy and Environment - Division of Environmental Quality and Damascus Cryptocurrency Mining Facility 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 Newrays One, LLC ("Newrays") entered into a December 12th Consent Administrative Order ("CAO") addressing an alleged violation of the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") Construction Permit Program. See LIS No. 25-002.

The CAO provides that Newrays operates a construction site for a cryptocurrency mining facility in Damascus, Arkansas.

The facility is stated to discharge stormwater to a manmade ditch, which eventually flows to the Arkansas River. Such discharge is stated to be subject to an NPDES Permit.

DEQ is stated to regulate discharges associated with non-contact cooling water, cooling tower blowdown, and boiler blowdown wastewater pursuant to the NPDES Non-contact Cooling Water, Cooling Tower Blowdown, and Boiler Blowdown Facilities Located within the State of Arkansas General Permit ("General Permit").

DEQ is stated to have conducted an inspection of the referenced facility on April 12, 2023. The facility is stated to have been determined to be operating without coverage under the Construction Stormwater General Permit ("Stormwater Permit").

The state agency notified Newrays of the inspection results and requested a response. Newrays is stated to have failed to submit a response to the inspection by the due date.

An inspection was undertaken on August 28, 2023, of the facility in which it is stated to have been observed that Newrays had installed a closed-loop water curtain cooling system for data processing equipment. The system is described as being comprised of 21 individual cooling curtains.

Discharges of non-contact cooling water from the various described cooling units is stated to have been observed. Further, the CAO provides that DEQ observed seepage from the base of certain constructed pads between various cooling units. In addition, the agency is stated to have observed an accumulation of cooling water from the discharge occurring at cooling unit C-10.

The discharge of non-contact cooling water is stated to be required to be authorized by the referenced permit or an individual permit. Such failure to obtain coverage under the referenced permits is stated to be a violation.

Newrays is stated to have provided DEQ on September 5, 2023, with a construction plan diagram and the correct mailing and physical address for the facility. Further, on September 8, 2023, Newrays submitted a response to the April 12, 2023, inspection. It stated that a Notice of Coverage had been completed and posted at the site entrance and a Stormwater Pollution Prevention Plan had been developed and implemented. Futher, documentation was submitted by Newrays demonstrating that the discharges of non-cooling water had ceased.

The CAO provides that if Newrays has not yet completed construction activities and stabilization at the site, it will immediately comply with all General Permit requriemetns and maintain satisfactory BMPs to mitigate and prevent sediment-laden stormwater from leaving the site. Further, if Newrays has not completed construction activities and stabilization at the site, then on or before the 15th day of the month following the effective date of the CAO, and each month thereafter, the company is required to submit monthly progress reports documenting the ongoing good housekeeping and all corrective actions taken to ensure silt and sediment are not leaving the site.

Copies of the site inspections and photographs documenting properly installed and maintained BMPs are required.

The CAO requires that upon completion of construction activities at the site and stabilization of disturbed areas as required by the General Permit, Newrays shall submit a final report to DEQ demonstrating that stabilization has been achieved in accordance with the requirements of the General Permit. An additional requirement is that Newrays certify to DEQ that all discharges of non-contact cooling water have ceased, or that in the alternative, it submit a Notice of Intent to obtain coverage under the relevant permit.

A civil penalty of $13,200.00 is assessed which could have been reduced by one-half if the CAO was signed and returned to DEQ within 20 calendar days of its receipt.

A copy of the CAO can be downloaded here.