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Stormwater Enforcement: Arkansas Department of Environmental Quality and Washington County, Arkansas, Construction Site Operator Enter into Consent Administrative Order

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The Arkansas Department of Environmental Quality (“ADEQ”) and Blue Springs Holding Company, LLC (“BSHC”) entered into a December 31st Consent Administrative Order (“CAO”) addressing alleged violations of a Clean Water Act National Pollution Discharge Elimination System (“NPDES”) Stormwater Construction General Permit. See LIS No. 19-001.

The CAO provides that BSHC operates a construction site (“Site”) in Washington County, Arkansas.

The Site is stated to be regulated pursuant to NPDES Stormwater Construction General Permit – Permit Number ARR150000.

ADEQ is stated to have conducted a routine compliance evaluation inspection of the site on April 19, 2017. The inspection allegedly revealed violations which included:

- The Notice of Coverage form was not posted at the Site entrance.
- The Storm Water Pollution Prevention Plan (“SWPPP”) was not signed at the time of the inspection.
- The silt fence was not installed around the entire perimeter of the Site in accordance with the SWPPP.
- The rock check dam at the Northwest corner was not installed as per the SWPPP, and the silt fence along the west side that was installed in lieu of the rock check dam was not properly installed or maintained.
- Off-site tracking of sediment was observed on the South Lake Road.
- Sediment was observed as having eroded offsite into ditches via runoff on the north and south sides of the Site and onto offsite roadways via tracking from vehicles and the accumulated sediment had not been recovered.
- Site inspection records were not available onsite at the time of the inspection.
- A fuel tank was observed onsite that was not accounted for in the SWPPP.

ADEQ is stated to have received an anonymous complaint that large amounts of sediment were spilling into roadside ditches and onto neighboring property from the Site on May 1, 2017. The agency is stated to have conducted a complaint investigation on that date of the Site. The investigation is stated to have identified sediment in a ditch and on a neighboring property along with a culvert.

BSHC provided ADEQ a description of actions it had taken to address the alleged violations noted during the inspections via email on May 25, 2017. The agency requested additional information and photographs from BSHC to demonstrate the violations had been sufficiently addressed. The CAO provides that ADEQ received no response to either a June 1, 2017, or a June 27, 2017, letter.

ADEQ subsequently received a written response to an August 17, 2017, letter. The agency stated that the response was satisfactory.

ADEQ is stated to have received a complaint on January 31, 2018, that construction had resumed at the Site and sediment was being deposited on neighboring property. The agency conducted a compliance evaluation inspection and identified certain alleged violations which included:

- The Notice of Coverage form was not posted at the Site entrance.
- The SWPPP was not signed at the time of the inspection.
- The silt fence and vegetative buffer indicated on the site map of the SWPPP were not installed and multiple wattles, an earthen berm, a rock dam, a drainage ditch, and a box culvert were observed in their steads which were not indicated on the SWPPP.
- The sedimentation basin had not been constructed as indicated in the SWPPP.
- The construction entrance was not stabilized.
- Multiple phase II activities, such as storm sewer system and utilities installation, clearing, and grading have occurred without the emplacement of the sedimentation basin or sediment traps identified in the SWPPP.
- The installed wattles and silt fencing were in need of significant maintenance and repair.
- Solid waste was observed on the ground and no solid waste containers were observed onsite.
- Inspection records were not being maintained.
- A fuel tank was observed onsite with the secondary containment vessel's plug removed allowing petroleum based products to spill out onto the surrounding soil.

ADEQ notified BSHC of the inspection results to which the Site operator replied. The agency determined that the response was not sufficient to detail the corrective actions taken to address the violations and requested additional information.

The CAO provides that ADEQ received a Notice of Termination ("NOT") from BSHC on July 18, 2018. The agency is stated to have returned the NOT in part because the Permit was issued for a large common plan of development. It further informed BSHC the NOT can be resubmitted once all construction (including landscaping and lot development) has been completed and all the lots are sold.

The CAO requires that on or before the effective date of the CAO that BSHC provide a response to ADEQ's letter of March 26, 2018. Further, the Site operator is required to provide the agency an updated site map of the common plan of the development depicting the current ownership and the construction status of each lot in the subdivision. In addition, it is required to submit quarterly progress reports to the agency documenting actions taken to ensure that silt and sediment are not leaving the Site (including copies of Site inspection reports and photographs documenting Best Management Practices.) The reports are required to be submitted until the project is either complete or Permit coverage has been terminated and the Site has the appropriate 80% documented ground cover, whichever is first.

The CAO assesses a civil penalty of \$8,500, which could have been reduced to \$4,250 if the document is returned to ADEQ within 20 days of receipt of the CAO.

A copy of the CAO can be found [here](#).