

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY



IN THE MATTER OF:

Heritage Homes and Development of Central Arkansas, Inc.
1119 Avilla East
Alexander, AR 72002

LIS No. 19- 060
Permit No. ARR156243
AFIN 63-01223

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("Order") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Heritage Homes and Development of Central Arkansas, Inc. ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ or "Department"), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a construction site called Springdale Estates Subdivision ("facility") located on Springdale Road approximately one-quarter mile north of Brock Road, Bryant, Saline County, Arkansas.
2. According to the Final Plat prepared by Respondent's Professional Engineer and submitted to the City of Bryant Planning Board, the Springdale Estates Subdivision is approximately 30.50 acres.

3. Respondent discharges stormwater associated with construction activity to an unnamed tributary, thence to the Little Hurricane Creek, thence to Hurricane Lake, thence to Hurricane Creek, thence to Saline River, thence to Ouachita River.

4. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES). ADEQ issued the NPDES Construction Stormwater General Permit (CSGP), Permit Number ARR150000, on May 4, 2016 with an effective date of November 1, 2016, and an expiration date of October 31, 2021.

5. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the NPDES program prohibits the discharge of pollutants except as in compliance with a permit issued under the NPDES program in accordance with 33 U.S.C. § 1342(a).

6. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (“the Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

7. Ark. Code Ann. § 8-4-217(a)(3) provides:

(a) It shall be unlawful for any person to:

(3) Violate any provisions of this chapter or of any rule, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

8. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

9. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

10. The operator of a construction site who fails to notify ADEQ of their intent to be covered under the NPDES CSGP and who discharges pollutants (sediment, debris, etc.) to waters of the state without an NPDES permit is in violation of the Act.

11. On November 15, 2018, ADEQ conducted a Reconnaissance Inspection of the facility in response to a complaint. The inspection revealed the following violations:

- a. The facility had neither applied for nor been issued coverage under the CSGP. Failure to obtain coverage under the CSGP is a violation of Ark. Code Ann. § 8-4-217(b)(1)(C) and 40 C.F.R. § 122.26 as incorporated by APC&EC Regulation 6.104 and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On December 3, 2018, ADEQ mailed Respondent a letter detailing the findings made during the inspection and requested a written response describing the course of action taken to correct each finding be submitted to ADEQ by December 20, 2018.

13. On January 10, 2019, Respondent responded via email and submitted three photographs in response to the inspection. The response did not address all the violations noted in the inspection report dated November 15, 2018.

14. On January 15, 2019, ADEQ notified Respondent that the response dated January 10, 2019, was deemed inadequate and that additional information was necessary to address the violations detailed in the November 15, 2018 inspection report and indicated that the deadline for the required response was January 31, 2019.

15. On March 15, 2019, ADEQ called and emailed Respondent concerning their failure to adequately submit a response that addresses the violations detailed in the November 15, 2018 inspection report.

16. On March 25, 2019, Respondent submitted to ADEQ a Notice of Intent (NOI) to be covered under the NPDES CSGP, a Stormwater Pollution Prevention Plan (SWPPP), and the applicable fees.

17. On April 1, 2019 and on April 23, 2019, ADEQ notified Respondent the NOI and SWPPP were incomplete.

18. On April 24, 2019, ADEQ received a complete NOI and SWPPP.

19. On April 26, 2019, ADEQ granted Respondent coverage under NPDES CSGP ARR150000 by issuing NPDES CSGP Tracking Number ARR156243 to Respondent with an expiration date of October 31, 2021.

ORDER AND AGREEMENT

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WHEREFORE, the parties stipulate and agree as follows:

1. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter for a period lasting one (1) year, and quarterly thereafter for an additional year, Respondent shall submit to ADEQ compliance reports with photographic evidence detailing the BMPs implemented, BMP maintenance activities, and inspections conducted to maintain compliance with the NPDES CSGP. Respondent shall also submit a final compliance report within thirty (30) days of completion of the project or termination of the coverage under the NPDES CSGP.

2. In compromise and full settlement of the violation specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Eight Hundred Dollars (\$1,800.00), or one-half of the full civil penalty of Nine Hundred Dollars (\$900.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this

Order. Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

ADEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs of collection.

3. Failure to meet any requirement or deadline of this Order constitutes a violation of said Order. If Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ stipulated penalties according to the following schedule:

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|---|-------------------|
| a. First day through fourteenth day: | \$100.00 per day |
| b. Fifteenth day through the thirtieth day: | \$500.00 per day |
| c. Each day beyond the thirtieth day: | \$1000.00 per day |

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

4. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify ADEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

5. ADEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

6. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

7. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Regulation No. 8, this matter is subject to being reopened upon Commission initiative, or in the event a petition to set aside this Order is granted by the Commission.

8. Nothing in this Order shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein,

9. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 21 DAY OF June, 2019.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Heritage Homes and Development of Central Arkansas, Inc.

BY: JD
(Signature)

Heritage Homes Joel GREEN
(Typed or printed name)

TITLE: owner

DATE: 6/6/19