

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Hedger Operating Company, LLC  
100 South Patrick  
Jonesboro, AR 72401

LIS No. 21-005  
Permit Tracking No. ARR00B913  
Permit No. AR0046981  
AFIN 16-00439

CONSENT ADMINISTRATIVE ORDER

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

The issues herein having been settled by the agreement of the Hedger Operating Company, LLC (Respondent) and the Division of Environmental Quality<sup>1</sup> (DEQ), 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 sand and gravel aggregate site (Facility) located at 4928 Highway 141 North, Jonesboro, Craighead County, Arkansas.
2. Respondent discharges process water and stormwater to an unnamed tributary of Mud Creek, then to Mud Creek, then to Big Creek Ditch, then to Bayou DeView, then to the Cache River, then to the White River in Segment 4B of the White River Basin.

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<sup>1</sup> Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
4. 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).
5. DEQ is authorized under the Act to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.
6. 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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].
7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 rule or permit issued pursuant to the Act.
8. 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.”
9. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000.

10. DEQ issued the NPDES Industrial Stormwater General Permit, ARR000000, with an effective date of July 1, 2014, and an expiration date of June 30, 2019. DEQ issued a renewal of the NPDES Industrial Stormwater General Permit on November 6, 2018, with an effective date of July 1, 2019, and an expiration date of June 30, 2024.
11. DEQ issued NPDES Industrial Stormwater General Permit coverage to Respondent for discharge of stormwater into waters of the state pursuant to the NPDES Industrial Stormwater General Permit, Permit Tracking Number ARR00B913 ("Permit ARR00B913") on June 30, 2014, with an effective date of July 1, 2014, and an expiration date of June 30, 2019. DEQ again issued NPDES Industrial Stormwater General Permit coverage under Permit ARR00B913 to Respondent on August 26, 2020, with an expiration date of June 30, 2024.
12. DEQ issued the current NPDES Permit Number AR0046981 ("NPDES Permit") to Respondent on June 30, 2010, with an effective date of July 1, 2010, and an expiration date of June 30, 2015. DEQ issued the renewal NPDES Permit on October 13, 2015. The NPDES Permit became effective on November 1, 2015, and expires on October 31, 2020.
13. On March 1, 2018, DEQ performed an Industrial Stormwater Inspection and Water Inspection and the following violations were observed:
  - a) A discharge from a levee breach of the stormwater pond was observed. Permit ARR00B913 only authorizes discharges from Outfall 001. This discharge from a levee breach of the stormwater pond is an unpermitted discharge in violation of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
  - b) Samples were collected at the culvert of the receiving stream instead of from the monitoring points specified on the Notice of Intent (NOI) and Stormwater Pollution

Prevention Plan (SWPPP). This is a violation of Part 3.7 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- c) The Stormwater Annual Report (SWAR) was unavailable during the inspection. This is a violation of Part 5.2.4 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

14. On May 24, 2018, DEQ notified Respondent via letter of the results of the March 1, 2018 inspection, and requested a written response be submitted by June 14, 2018.

15. On June 11, 2018, Respondent submitted a response to the March 1, 2018, inspection.

16. On July 3, 2018, DEQ notified Respondent via letter that the inspection response submitted on June 11, 2018, adequately addressed the violations documented during the inspection performed on March 1, 2018.

17. On May 30, 2019, DEQ performed an Industrial Stormwater and Process Wastewater Inspections and the following violations were observed:

- a) A discharge from a levee breach of the stormwater pond was observed. Permit ARR00B913 only authorizes discharges from Outfall 001. This discharge from a levee breach of the stormwater pond is an unpermitted discharge in violation of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3). This is a repeat violation.
- b) The water discharging from this levee breach was turbid. Discharge of turbid water from the Facility is a violation of Part 3.2 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c) The following items were missing from the site map:
  - i. Locations of all receiving waters in the immediate vicinity of the facility;

- ii. Locations of all stormwater conveyances including ditches, pipes, and swales;
- iii. Locations of all stormwater monitoring points;
- iv. Locations of all stormwater inlets and outfalls; and
- v. Directions of stormwater flows.

Failure to include the required descriptions on the site map is a violation of Part 4.2.3 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

- d) The Facility has process wastewater that was not described as a potential non-stormwater discharge. The SWPPP must include measures to identify and eliminate the discharge of process wastewater and other illicit discharges to stormwater systems or waters of the state. Failure to identify potential non-stormwater discharges is a violation of Part 4.2.4.4 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e) The SWPPP was not available at the time of the inspection. Failure to make the SWPPP available during an inspection is a violation of Part 4.4 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3). A copy of the SWPPP was emailed to DEQ on June 7, 2019. A review of the SWPPP revealed the following items were missing from the SWPPP in violation of Part 4.2.6 of Permit ARR00B913 and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3):
  - i. Sampling results associated with the SWAR;
  - ii. Housekeeping schedule and documents; and
  - iii. Employee Training Documents.

- f) Erosion controls, including flow velocity dissipation devices, were not properly implemented in the stormwater ponds. Failure to implement erosion and sediment controls properly is a violation of Part 3.1.5 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- g) Samples were being collected from the Craighead 764 roadside ditch and not at the permitted outfall. Failure to sample from the permitted outfall is a violation of Part 3.8.2 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- h) The routine visual site inspections performed by Facility personnel in 2018 did not document the deterioration that lead to the levee breach. Failure to document onsite conditions in the inspection report is a violation of Part 5.1.1 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- i) Comprehensive site inspections were not conducted on an annual basis. Failure to conduct a comprehensive site compliance inspection at least once per year is a violation of Part 5.1.2 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).
- j) The levee breach that occurred on May 30, 2019, was not initially reported to DEQ. Failure to notify DEQ of a non-compliance is a violation of Part 7.23 of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

18. On June 3, 2019, Respondent and DEQ met to discuss the corrective actions needed to repair the levee and stop the discharge of uncontrolled stormwater to the roadside ditch. Respondent also stated that pipes would be installed for ease of sampling during site inspections.

19. On June 5, 2019, DEQ performed a site visit of the Facility to see the newly constructed levee. DEQ expressed concerns over the unstabilized ground due to the levy construction.
20. On June 10, 2019, DEQ performed a follow-up site visit to view the area after the recent rainfall. During the site visit, DEQ observed evidence of erosion of the levee and surrounding area. The concerns were expressed to Respondent during the site visit. Respondent planted grass on the levee and surrounding area the same day.
21. On June 18, 2019, DEQ performed a site visit of the Facility to observe the newly constructed levee. DEQ observed evidence of sprouting vegetation on the levee and surrounding area and the discharge pipes were sticking up at an angle above the surface in Stormwater Pond #2. The water level observed in the pond was very high.
22. On June 19, 2019, DEQ performed a follow-up site visit to observe the levee. During the visit, DEQ observed a levee washout at the location of the discharge pipes and one of the pipes was observed in the road. It was determined that conditions were unsafe and local law enforcement was contacted to ensure the safety of citizens and also to direct traffic, as the water was completely covering State Highway 141. Respondent tried to use an excavator to push dirt and rocks at the bottleneck of the washout to cease the discharge from the pond. This method was attempted several times and was not successful. Respondent had to haul in rock to cease the discharge. Permit ARR00B913 only authorizes discharges from Outfall 001. This discharge from a levee breach of the stormwater pond is an unpermitted discharge in violation of Permit ARR00B913 and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3)..
23. On June 20, 2019, a meeting was held at the Facility with Respondent and DEQ to discuss the process wastewater and how it was separated from the stormwater. The levee

washout location was also observed and plans moving forward were discussed. During the meeting, DEQ observed the following operation and maintenance violations:

- a) A large amount of sediment had accumulated in the process water ponds; and
- b) Trees and other vegetation were observed in the process water ponds.

These conditions demonstrate Respondent's failure to operate and maintain the Facility properly in violation of Part III, Section B.1.a of Permit AR0046981 and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

24. On June 24, 2019, Respondent submitted a letter to DEQ detailing the violations documented in the previous inspections and what corrective actions were being taken to address each violation. The letter included a notification of the levee washout.

25. On September 4, 2019, DEQ notified Respondent via certified letter of the results of the inspection performed on May 30, 2019, and follow up site visits.

26. On September 25, 2019, Respondent submitted a response to the inspection performed on May 30, 2019, to DEQ. The response stated the following:

- a) The levee was repaired and photographic documentation was submitted with the response.
- b) Additional Best Management Practices (BMPs) were added to prevent the discharge of turbid waters. Stormwater is now diverted through vegetation and rock check dams before leaving the outfall. Photographic documentation of the new BMPs was provided with the response.
- c) The site map was updated to include all of the missing information. A copy of the updated site map was provided with the response.



- d) The SWPPP was updated to include measures that identify and eliminate the discharge of wastewater and other illicit discharges to waters of the state. Copies of the updated SWPPP pages were included with the response.
- e) Copies of sampling results, employee training documents, and monthly inspection reports were included with the response.
- f) Velocity dissipation devices were installed at the location where pond 1 discharges into pond 2. Photographic documentation was included with this response.
- g) The individual responsible for collecting samples was trained on proper sampling techniques in accordance with Part 3.8.2 of Permit ARR00B913. A copy of the training was provided with the response.
- h) Facility personnel were trained to conduct proper site inspections and look for deficiencies. A copy of the training was provided with the response.
- i) Comprehensive site inspections will be performed going forward.
- j) In the future, non-compliance will be reported to DEQ within thirty (30) days.
- k) A dredge was purchased, and employees have been trained on the dredge. The process water ponds will be dredged to address the sediment that has accumulated in those ponds.
- l) The trees and other vegetation will be removed from the process water ponds.

27. On March 17, 2020, DEQ sent Respondent a letter stating that the case had been turned over to the Enforcement Branch. The letter also requested that a Corrective Action Plan (CAP) be submitted within forty-five (45) days of receipt of the letter. The CAP was to be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas and include a milestone schedule

for the corrective actions, a final compliance date, and include the following additional information:

- a) A detailed plan and schedule for sediment removal;
- b) Photographs documenting removal of the trees and vegetation documented in the process water ponds;
- c) Details, photographs, and certification that the levy has been fully repaired to Ten State Standards; and
- d) A written operational policy and procedure for maintaining the freeboard of the settling pond and conducting effluent discharges from the Facility to include detailed sampling and flow measurement procedures.

28. On April 28, 2020, Respondent submitted a CAP to DEQ. The CAP addressed DEQ's concerns and had a final compliance date of December 31, 2021.

29. On May 20, 2020, DEQ sent Respondent a letter approving the CAP submitted on April 28, 2020.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall implement the approved CAP in accordance with the milestone schedule contained in the CAP submitted to DEQ on April 28, 2020. The approved CAP, milestone schedule, and final compliance date of December 31, 2021, shall be fully enforceable as terms of this Order.
2. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance

and completion of the approved CAP. Respondent shall submit the final compliance report by December 31, 2021.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Four Thousand Seven Hundred Sixty Dollars (\$4760.00) or one-half of the full civil penalty of Two Thousand Three Hundred Eighty Dollars (\$2380.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, 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, DEQ shall be entitled to attorneys' fees and costs of collection.

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

- |   |                   |
|---|-------------------|
| 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 that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

5. 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 DEQ, 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.
6. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.
7. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

8. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) 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 Rule 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.

9. Nothing in this Order shall be construed as a waiver by DEQ 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

10. 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 12 DAY OF January, 2020.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Hedger Operating Company LLC

BY: [Signature]  
(Signature)

Dustin Hedger  
(Typed or printed name)

TITLE: COO

DATE: 12-18-2020