

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Cossatot Rock, LLC
P.O. Box 890
DeQueen, AR 71832

LIS No. 20-010
Permit Number AR0049034
AFIN 67-00108

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Cossatot Rock, LLC (Respondent) and the Division of Environmental Quality¹ (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 an open cut mining operation (“Facility”) located at 113 Old Dierks Highway, Lockesburg, Sevier County, Arkansas.
2. Respondent is authorized to discharge sand and gravel wash water and stormwater runoff to an unnamed tributary, thence to Hale Creek, thence to Cossatot River, thence to the Little River, thence to Milwood Lake in Segment 1C of the Red River Basin.

¹ 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 Arkansas Water and Air Pollution Control Act (“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. DEQ issued NPDES Permit Number AR0049034 (“Permit”) to Respondent on June 23, 2015. The Permit became effective on July 1, 2015, and expired on June 30, 2020.

10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.
11. Respondent intends to operate this Facility beyond the expiration date of the current permit, June 30, 2020.
12. On July 5, 2019, and October 4, 2019, Respondent was notified that the Permit would expire on June 30, 2020, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than January 2, 2020.
13. DEQ received an application for renewal from Respondent on December 31, 2019. On January 7, 2020, DEQ notified Respondent via certified letter that the renewal application was incomplete.
14. On June 17, 2020, Respondent submitted a complete permit renewal application. On June 24, 2020, DEQ notified Respondent that the permit renewal application submitted on June 17, 2020, was administratively complete.
15. The complete Permit renewal application was not received by January 2, 2020. Failure to submit the Permit renewal application by January 2, 2020 is a violation of Part III, Section D, Condition 10 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

Inspection Violations

16. On May 19, 2020, DEQ conducted a routine compliance evaluation inspection of the Facility and documented the following violations: :
 - a. Respondent does not have an operator with a Basic Industrial Wastewater License to operate the Facility. Failure to maintain a Basic Industrial licensed operator is a violation of Part II, Condition I of the Permit. Failure to provide adequate

operating staff that is duly qualified to carryout operations at this Facility is a violation of Part III, Section B, Condition 1(B) of the Permit, Each of these violations constitutes two (2) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

- b. Trees and vegetation were growing along the berms of the treatment pond. Failure to operate and maintain the facility properly is a violation of Part III, Section B, Condition 1(A) of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On June 11, 2020, DEQ notified Respondent of the inspection results via letter. The letter requested a written response to the inspection, addressing the violations cited, be sent to DEQ by June 25, 2020.

18. On July 14, 2020, DEQ received Respondent's response to the violations cited in the May 19, 2020 inspection report. The response included photographs showing that the vegetation along the berms of the ponds had been removed.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall obtain the services of a wastewater operator with a minimum of Basic Industrial Wastewater License issued by DEQ and provide to DEQ a copy of the contract between the licensed operator and Respondent and a copy of the license.
2. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Dollars (\$2000.00), or one-half of the

full civil penalty of One Thousand Dollars (\$1000.00) 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:

Division of Environmental Quality
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, the 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 adequately respond 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 21 DAY OF January, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Cossatot Rock, LLC

BY: Bobby Young
(Signature)

BOBBY YOUNG
(Typed or printed name)

TITLE: PLANT MANAGER

DATE: 12/21/2020