

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Arkansas Gravel Co., Inc.
PO Box 1163
Hampton, AR 71744

LIS No. 22- 109
Permit Tracking No. ARG500029
AFIN 07-00338

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 the Arkansas Gravel Co., Inc. (Respondent) and the Division of Environmental Quality (DEQ or "Division"), 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 mining facility ("facility") located on Route 3, County Road 26, Hampton, Calhoun County, Arkansas.
2. Respondent discharges treated process water to an unnamed tributary, thence to Blann Creek, thence to Lloyd Creek, thence to Moro Creek, thence to Ouachita River.
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 provides:

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

(1) Cause pollution, as defined in 8-4-102, of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(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].

(4) Knowingly to make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter;

...

(b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the division:

...

(C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this

state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized;

(D) To construct or use any new outlet for the discharge of any wastes into the waters of this state; or

(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.

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 General Permit Number ARG500000 for Aggregate Facilities on August 1, 2015, with an effective date of February 1, 2016, and an expiration date of January 31, 2021. DEQ renewed the NPDES General Permit Number ARG500000 for Aggregate Facilities on April 22, 2020, with an effective date of February 1, 2021, and an expiration date of January 31, 2026.

10. On September 5, 2017, DEQ issued coverage pursuant to the NPDES General Permit Number ARG500000 for Aggregate Facilities to Respondent with Permit tracking number ARG500029 (“Permit ARG500029”). On February 15, 2018, DEQ modified Respondent’s coverage. On January 29, 2021, DEQ issued coverage pursuant to the renewed NPDES General Permit Number ARG500000 for Aggregate Facilities to Respondent. Respondent’s coverage under Permit ARG500029 expires on January 31, 2026.

11. On August 7, 2017, DEQ issued Notice of Violation (“NOV”) LIS 17-053 to Respondent. Respondent received NOV LIS 17-053 on August 10, 2017. Respondent did not file a request for hearing on the allegations stated in NOV LIS 17-053.

12. On August 25, 2017, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

a. An unpermitted discharge of process water was observed exiting the facility from an overflow of their containment pond and causing pollution of waters of the state. The discharge was observed crossing underneath County Road 26, and subsequently flowing into an unnamed tributary that enters a private pond. This condition violated Ark. Code Ann. § 8-4-217(a)(1).

b. Respondent added to the permitted facility by increasing mining operations without first providing notice and the plans and specification to DEQ for review and approval prior to those planned physical alterations or additions to the permitted facility as required by Condition 6.1 of Permit ARG500029. This action violated Ark. Code Ann. § 8-4-217(a)(3) and (b)(1)(C).

13. On September 15, 2017, the Division notified Respondent of the inspection results.

14. On January 5, 2018, Respondent submitted a Notification of Intent that proposed to remove Outfall 002 and modify the treatment ponds to bring those ponds into compliance with Permit ARG500029 (“pond rehabilitation project”).

15. On February 9, 2018, Respondent reported two (2) levee breaches resulting in unpermitted discharges of process water that exited the facility causing pollution of waters of the state by crossing underneath County Road 26, and subsequently depositing into a private pond.

This condition violated Ark. Code Ann. § 8-4-217 (a)(1) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

16. On February 15, 2018, the Division approved the pond rehabilitation project submitted on January 5, 2018, and issued a new Notice of Coverage for Permit ARG500029. This new Notice of Coverage authorized Respondent to implement its pond rehabilitation project.

17. On March 8, 2018, the Division conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

a. An unpermitted discharge of turbid water from a levee breach at pond 4A was observed exiting the facility and causing pollution to waters of the state. The discharge was observed crossing underneath County Road 26, and subsequently depositing into an unnamed tributary that enters a private pond. This condition violated Ark. Code Ann. § 8-4-217 (a)(1) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

18. On March 20, 2018, the Division notified Respondent of the inspection results via letter.

19. Respondent submitted a response to the inspection results on April 6, 2018.

20. On April 25, 2018, Respondent notified the Division of a levee breach at the facility. Respondent informed DEQ that the breach was repaired on April 25, 2018.

21. On May 17, 2018, Respondent informed DEQ that the repairs necessary to address the April 24, 2018 levee breach in Pond 4 constituted the bulk of Respondent's progress on its pond rehabilitation project during the end of April.

22. On September 25, 2018, following several months of bi-weekly progress reports on Respondent's pond rehabilitation project, DEQ granted Respondent an extension until October 12, 2018, to complete the pond rehabilitation project.

23. On December 31, 2018, the Division conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. A DEQ Inspector observed a discharge occurring from an unpermitted outfall. The unpermitted outfall was a pipe located in the levee of Pond 4 approximately 60 yards north of permitted Outfall 001. This unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(D) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. A DEQ Inspector observed a discharge occurring from permitted Outfall 001. The discharge monitoring report (DMR) submitted by Respondent for the December 1 through December 31, 2018, reporting period indicated No Discharge had occurred. Permit ARG500029 requires Respondent to report and monitor discharges from Outfall 001. This failure to report and monitor the discharge from Outfall 001 violated Condition 2.2 of Permit ARG500029 and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. A DEQ Inspector also observed water flowing from a wooded area south of Pond 4. The water was flowing from an area of the facility containing scattered strip pits and impoundments located immediately southeast of ponds 3 and 4. The water flowing from this area was turbid and discolored and flowed underneath County Road 26, and subsequently into an unnamed tributary that enters a private pond. The water flowing from scattered strip pits and impoundments was not discharged from a permitted outfall. This unpermitted discharge violated Ark. Code Ann. §§ 8-4-217 (a)(1) and (b)(1) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

24. On February 7, 2019, the Division notified Respondent of the inspection results.
25. On February 28, 2019, Respondent submitted a response to the inspection results.
26. The Division conducted follow-up compliance inspections to determine the presence of a discharge from the facility. Those inspections occurred on January 9, 2019, January 16, 2019, February 6, 2019, February 27, 2019, and March 6, 2019. A discharge was observed occurring at Outfall 001 during all of the aforementioned inspections.
27. On February 25, 2019, Respondent submitted a DMR for the January 1 through January 31, 2019 reporting period indicating No Discharge Indicator Code (NODI) 4, Discharge to Lagoon/Groundwater, for all parameters.
28. On March 5, 2019, the Division contacted Respondent concerning the January 2019 DMR submission. Follow up contact attempts were made on March 19, 2019, and March 20, 2019.
29. The DMRs for the December 1 through December 31, 2018, and January 1 through January 31, 2019 reporting periods submitted by Respondent indicated No Discharge had occurred from the facility. DEQ observed discharges during both of these monitoring periods. Respondent knowingly made a false statement or certification in its DMRs for December 2018 and January 2019, and therefore violated Ark. Code Ann. § 8-4-217(a)(4).
30. On March 7, 2019, Respondent submitted a request for a Permit Modification to add the unpermitted outfall to Permit ARG500029.
31. On March 27, 2019, the Division contacted Respondent concerning the January and February 2019 DMR submissions.
32. Respondent subsequently corrected the DMR for the January 2019 reporting period to NODI E, Analysis not Conducted/No Sample. Failure to monitor the discharge from Outfall 001

violated Condition 2.2 of Permit ARG500029 and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

33. On May 16, 2019, Respondent submitted a DMR for the February 2019 reporting period indicating NODI E, Analysis not Conducted/No Sample. Failure to submit the DMR timely is a violation of Permit ARG500029, Condition 5.5. Failure to monitor the discharge is a violation of Permit ARG500029, Condition 2.2. These violations constitute two (2) separate violations of the Ark. Code Ann. § 8-4-217(a)(3).

34. On May 23, 2019, Respondent submitted a final engineering report on actions taken to resolve the levee breach. Respondent's final report included an unpermitted outfall. That unpermitted outfall was not approved by DEQ and was not constructed in accordance with any designs and specifications approved by DEQ.

35. On Respondent's DMR for the monitoring period ending on October 31, 2019, Respondent reported a violation of the permitted effluent limit for total suspended solids (TSS). This violation of the monthly average permitted effluent limit for TSS is a violation of Condition 2.1 of Permit ARG500029 and therefore a violation of the Ark. Code Ann. § 8-4-217(a)(3).

36. On Respondent's DMR for the monitoring period ending on January 31, 2020, Respondent reported violations of the permitted effluent limits for total suspended solids (TSS). The reported violations of the monthly average and daily maximum permitted effluent limits for TSS are both violations of Condition 2.1 of Permit ARG500029 and therefore violations of Ark. Code Ann. § 8-4-217(a)(3).

37. On September 27, 2021, DEQ reviewed Respondent's DMRs for the monthly monitoring periods from January 1, 2018, to August 31, 2021, which revealed the following:

- a. On Respondent's DMR for the monitoring period ending on January 31, 2021, Respondent reported a violation of the permitted effluent limit for TSS. The reported violation of the monthly average permitted effluent limits for TSS is a violation of Condition 2.1 of Permit ARG500029 and therefore is a violation of the Ark. Code Ann. § 8-4-217(a)(3).
- b. From January 1, 2018, to December 31, 2018, Respondent reported "No Discharge" for each monthly monitoring period, except February 2018.¹
- c. From January 1, 2019, to August 31, 2021, Respondent reported discharges for each monthly monitoring period.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent has agreed to enter into this Order to settle the matters contained in NOV LIS 17-053.
2. In compromise and full settlement of the violations specified in NOV LIS 17-053, Respondent agrees to pay a civil penalty of Six Thousand Four Hundred Dollars (\$6400.00). Payment is due within ninety (90) calendar days of the effective date of this Order.
3. Upon receipt and processing of payment of the civil penalty of Six Thousand Four Hundred Dollars (\$6400.00) for NOV LIS 17-053, NOV LIS 17-053 shall be closed
4. Respondent shall submit a certification that the facility is in compliance with all effluent limits, reporting requirements, and sampling requirements of Permit ARG500029. If Respondent submits a certification that the facility is in compliance with the Permit requirements,

¹ Respondent also reported a weather related discharge for its February 2018 DMR, but no sample results were provided as part of the DMR.

Respondent is not required to submit a Corrective Action Plan (CAP) and report on its progress as required by Paragraphs 5 and 6 below.

5. If Respondent is unable to certify compliance with all effluent limits, reporting requirements, and sampling requirements of Permit ARG500029, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than December 31, 2023, and the CAP shall detail the methods and best available technologies that will be used to correct the violations referenced in the Findings of Fact and prevent future violations. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance December 31, 2023, contained in the CAP. The approved CAP, milestone schedule, and final compliance December 31, 2023 shall be fully enforceable as terms of this Order.

6. If Respondent submits a CAP pursuant to this Order, Respondent shall submit monthly progress reports detailing the actions taken to comply with the Permit and complete any corrective actions required by the approved CAP. Monthly progress reports shall be due on or before the fifteenth (15th) day of each month following the effective date of this Order until this Order is closed. Respondent shall submit a final compliance report stamped by a Professional Engineer, licensed in the state of Arkansas, no later than December 31, 2023.

7. On or before the effective date of this Order, Respondent shall submit to DEQ individual certifications from the Responsible Official and each Cognizant Official stating that the individual has read the Permit and is aware of the requirements of Permit ARG500029.

Respondent shall submit this certification for any new Responsible Official or Cognizant Official for the term of the Permit.

8. Beginning with the first monitoring period immediately following the effective date of this Order, Respondent, in addition to the sampling requirements in Permit ARG500029, shall provide DEQ with a copy of the lab results, including the chain of custody, for each sample. Respondent shall attach these lab results, including the chain of custody, to the corresponding DMR via NetDMR.

9. Beginning with the monitoring period immediately following the effective date of this Order, Respondent, in addition to the reporting requirements in Permit ARG500029, shall include with its DMRs a daily log that reports the following information for each outfall covered by Permit ARG500029:

- a. If a discharge occurred, and
- b. The total rainfall for that day, as determined from an on-site rain gauge.

The log shall be certified monthly by the Responsible Official or Cognizant Official prior to submittal with the DMR.

10. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, a certification that the area(s) where silt and sediment have left the facility including, but not limited to, the drainage path west of Calhoun County Road 26 including the wooded area and private pond indicated in Findings of Fact Paragraph 23 have been remediated.

11. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Forty-five Thousand Dollars (\$45,000.00). Respondent shall pay the civil penalty in six (6) monthly payments of Seven Thousand Five Hundred Dollars (\$7500.00). The first payment shall be due one hundred twenty (120) days from

the effective date of this Order, and paid monthly thereafter for the next five (5) months. Payment of the civil 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.

12. 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:

First day through fourteenth day:	\$100.00 per day
Fifteenth day through the thirtieth day:	\$500.00 per day
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.

13. 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.

14. DEQ 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 DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

15. 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.

16. 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.

17. 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.

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

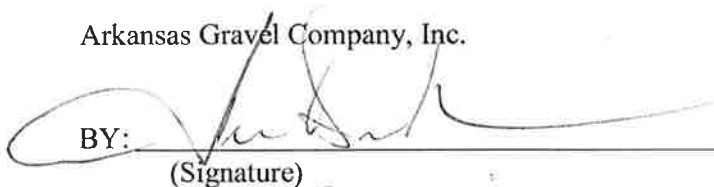
SO ORDERED THIS 3rd DAY OF November, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Arkansas Gravel Company, Inc.

BY: 

(Signature)

Irene Bradshaw

(Typed or printed name)

TITLE: President

DATE: 10-31-22