

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

White Oaks Storage LLC  
9610 White Oak Crossing  
North Little Rock, AR 72113

LIS No. 23- 019  
Permit No. ARR157038  
AFIN 60-06062

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 White Oak Storage LLC (Respondent) and the Division of Environmental Quality (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 construction site ("site") located at 9610 White Oaks Crossing, North Little Rock, Pulaski County, Arkansas.
2. Respondent discharges stormwater to an unnamed tributary of White Oak Bayou.
3. Respondent is subject to regulation 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 a NPDES permit.
6. DEQ regulates stormwater discharges associated with construction activity pursuant to the NPDES Stormwater Construction General Permit, Permit Number ARR150000 (“General Permit”). DEQ issued the General Permit on May 4, 2016, with an effective date of November 1, 2016, and an expiration date of October 31, 2021. DEQ renewed the General Permit with an effective date of November 1, 2021, and an expiration date of October 31, 2026.
7. Respondent submitted a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) for coverage under the General Permit on June 23, 2021. DEQ issued Notice of Coverage (NOC) to Respondent with Permit Tracking Number ARR157038 (“Permit”) with a coverage date of June 23, 2021, and an expiration date of October 31, 2021. Respondent submitted a Renewal NOI to DEQ on September 12, 2021, and DEQ issued the Renewal NOC to Respondent on October 25, 2021, with a coverage date of November 1, 2021, and an expiration date of October 31, 2026.
8. Ark. Code Ann. § 8-4-217(a)(2), (3) provides:
  - (a) It shall be unlawful for any person to:

...

(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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

9. 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.

10. 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.”

11. On December 15, 2021, DEQ conducted a Construction Stormwater Inspection of the site. The inspection revealed the following violations:

- a. The NOC was not posted near the entrance of the construction site and was not visible to the public. This is a violation of Part II, Section A.2.D of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. The SWPPP and inspection reports were not available at the site during normal business hours. This is a violation of Part II, Section A.2.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. All Best Management Practices (BMPs) for stormwater controls listed in the SWPPP and the site map have not been installed and implemented at the site. This is a violation of Part II, Section A.4.G of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- d. Silt fences, check dams, velocity dissipation, sedimentation basins, and sediment traps implemented at the site have not been installed properly and maintained. This is a violation of Part II, Section B.17.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. The site entrance is not sufficiently stabilized to prevent offsite tracking. This is a violation of Part II, Section A.4.J.2 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. Inspection records are not being maintained at the site or are not being conducted in accordance with the SWPPP and the requirements set forth in the Permit. This is a violation of Part II, Section A.4.N.1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- g. Solid waste was not being controlled as described in the SWPPP. This is a violation on Part II, A.4.I.1.f of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- h. The concrete wash-out area is not identified correctly on the site map. This is a violation of Part II, Section A.4.H.8 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- i. Sediment has migrated off the site and is likely to discharge into and cause pollution of waters of the state. This is a violation of Ark. Code Ann. § 8-4-217(a)(2) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- j. Sediment that has escaped the site has not been removed. This is a violation of Part II, A.4.I.1.d of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
12. On February 25, 2022, DEQ notified Respondent of the inspection results and requested a written response addressing the violations be submitted to DEQ by March 11, 2022.
13. On March 10, 2022, DEQ received Respondent's written response regarding the actions taken by Respondent to correct the violations identified during the inspection.
14. On June 8, 2022, DEQ notified Respondent via letter that the response received on March 10, 2022, did not sufficiently address the violations referenced in the inspection report and additional documentation was required. DEQ requested that Respondent submit the additional documentation by June 28, 2022.
15. To date, DEQ has not received the additional documentation requested in its letter dated June 8, 2022.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with all Permit requirements.
2. Respondent shall immediately implement Best Management Practices (BMPs) and correct the items referenced in the Findings of Fact Paragraph 11.
3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a comprehensive Corrective Action Report that includes, but is not limited to, photographs detailing the improvements made at the site to correct the violations and prevent recurrences.

4. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a revised SWPPP that contains the BMPs utilized at the site and a revised site map.

5. 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 until this Order is closed or until the Permit has been terminated by DEQ, whichever occurs first, Respondent shall submit monthly progress reports documenting the ongoing good housekeeping and all corrective actions taken to ensure silt and sediment are not leaving the site. The progress reports shall also include copies of the site inspections and photographs documenting properly installed and maintained BMPs.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Seven Hundred Fifty Dollars (\$8750.00), or one-half of the full civil penalty of Four Thousand Three Hundred Seventy-five Dollars (\$4375.00) 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. Payment of the penalty shall be made payable to the Division 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, DEQ shall be entitled to attorneys' fees and costs of collection.

7. 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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 3<sup>rd</sup> DAY OF March, 2023.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR  
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

White Oaks Storage LLC

BY: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Typed or printed name)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_