

CH# 1034 \$5000.00

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY

IN THE MATTER OF:

WEDINGTON MINE, LLC
24 EAST MEADOW ST.
FAYETTEVILLE, AR

LIS #: 23-098
AFIN #: 72-02402
PERMIT NO.: ARR150000
0002-MN-AG2-027

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (CAO) is entered by a delegatee of the Director of the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”, “Division” or “Department”) and Wedington Mine, LLC (Respondent) pursuant to the Arkansas Open-Cut Land Reclamation Act codified at Ark. Code Ann. § 15-57-301 *et seq.*, the Arkansas Pollution Control and Ecology Commission's (APC&EC) Rule No. 15: Arkansas Open-Cut Mining and Land Reclamation, and in accordance with the provisions of APC&EC Rule 8: Administrative Procedures.

The issues herein, having been settled by the agreement of Respondent and the DEQ, it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. On May 9, 2019, DEQ issued Open-cut Mining Permit No. 0002-MN-AG2-027 (“Permit”) to Respondent.
2. The Permit became effective on May 9, 2019 and remains in effect until January 14, 2024.
 - A. **2019-August 2023**
3. Based on previous DEQ inspections and previous documents submitted to DEQ before September 2023 by the Respondent, DEQ has cited Respondent with violations of

SCANNED

DEC 06 2023

MAILROOM

APC&EC Rule 15.

4. During the permit term, Respondent was acquired by member purchase. No Notice of Intent form or disclosure form had been submitted to the Department memorializing this change in ownership and allowing the Department to modify the existing open-cut mining permit.
5. In accordance with Rule 15.301(A), it shall be unlawful for any operator to engage in open-cut mining without first obtaining all appropriate permits from the Division.
6. Respondent's operation of the mine without first obtaining a modified open-cut mining permit from DEQ is a violation of APC&EC Rule 15.301(A).
7. The permitted area for the mine site was four (4) acres located in Washington County, Arkansas.
8. Respondent has affected more than 4 acres with its current open-cut mining operations.
9. By mining outside of the permitted area, Respondent commenced open-cut mining without a permit in violation of APC&EC Rule 15.301(A).
10. Respondent commenced open-cut mining operations outside of the acreage described in its Mining Plan, and is required to reclaim acreage not described in its Reclamation Plan. Failure to update the Reclamation Plan and Mining Plan to accurately reflect the acreage being affected is a violation of APC&EC Rules 15.307 and 15.308.
11. Respondent is required to provide DEQ with a sufficient reclamation bond as required by Rule 15.309 for the entire acreage affected by its operations. Because Respondent affected more than 4 acres, the reclamation bond was inadequate.
12. In accordance with Rule 15.309(D), in the event the Division determines the proposed bond amount to be inadequate, the Applicant/Operator and any surety or indemnifier on the bond

will be notified that the value of the required bond or substituted security must be increased as provided in the Act.

13. On February 16, 2023, DEQ notified Respondent of the necessary increase to the bond amount. Respondent did not increase the reclamation bond amount for its current operations until September 2023 and has therefore violated APC&EC Rule 15.309.
14. Since Respondent has affected more than 4 acres and exceeded the permitted acreage, Respondent commenced open-cut mining operations outside of the permitted boundary. Respondent also did not accurately mark its boundaries for its permitted acreage. This operation is a violation of APC&EC Rule 15.402(A).
11. During a previous inspection, DEQ observed a sign with information including only a previous member's contact information. No information for the current member of the Respondent was included on the identification sign at the entrance of the site.
12. In accordance with Rule 15.402(Q), the operator is to have mine and permit identification signs that shall:
 - a) Be displayed at each point of access to the permit area from public roads;
 - b) Show the current permit number and the name, business address, and telephone number of the operator; and
 - c) Be retained and maintained until after the final release of the bond for the permit area.
13. Because Respondent's sign was not updated to reflect the new members of Wedington Mine, LLC, it violated Rule 15.402(Q).

B. September 2023 submittals

14. On September 12, 2023, Respondent submitted documentation to the Department for

review. These submittals included a cover letter from Emerald Solutions, an updated Notice of Intent for Permit No. 0002-MN-AG2, a filed warranty deed showing Wedington Mine, LLC as the owner of the site, an updated Disclosure Statement, an updated Mining Plan, an updated Reclamation Plan, a new issued letter of credit in the amount of \$45,000.00, a photograph showing an updated sign at the front of the mine on a fence, an updated map of the location of the mine site, and an updated survey.

15. On November 13, 2023, the Department notified the Respondent that it has received all submittals requested in its February 2023 correspondence.

ORDER AND AGREEMENT

1. Within 30 days of the effective date of the Order, Respondent shall clearly mark the permitted area on the ground at all times using metal posts or stakes projecting thirty-six inches (36”) above ground and painted Hunter Orange or like color. These markers must remain in place until the site has been reclaimed and Respondent has obtained a release from reclamation liability from the DEQ.
2. In compromise and full settlement of the violations alleged in the Findings of Fact in this Order, Respondent agrees to pay the sum of **FIVE THOUSAND DOLLARS (\$5,000.00)** within 30 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:

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.

3. 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.

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 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.
5. 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.

6. 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.
7. 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.
8. 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.
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 10th DAY OF December, 2023.



LAWRENCE BENGAL
CHIEF ADMINISTRATOR OF ENERGY

APPROVED AS TO FORM AND CONTENT:

Wedington Mine, LLC

BY: 
(Signature)

James Mitchell Massey
(Typed or printed name)

TITLE: Member

DATE: 12/1/23