

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENTAL  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

East End Holdings, LLC  
20 Spring Valley Lane  
Little Rock, AR 72223

LIS No. ~~23~~-24-003  
Permit No. ARR157046  
AFIN 63-03837

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 East End Holdings, 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”) called Clear Creek subdivision located at 24200 US Hwy 167, Hensley, Saline County, Arkansas.
2. The site is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. Respondent’s activities at the site fall within the definition of “Construction Activity” as defined in 40 C.F.R. § 122.26(b)(14)(x).
4. NPDES permit coverage is required for stormwater discharges associated with construction activity pursuant to 40 C.F.R. § 122.26(a)(1)(ii), as incorporated by APC&EC Rule 6.

5. 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).

6. 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.

7. 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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

8. 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.

9. 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.”

10. 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, 2021, with an effective date of November 1, 2021, and an expiration date of October 31, 2026.

11. On June 17, 2021, Respondent submitted a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWPPP) for coverage under the General Permit. DEQ issued Notice of Coverage (NOC) to Respondent with Permit Tracking Number ARR157038 (“Permit”) with a coverage date of July 13, 2021, and an expiration date of October 31, 2021. Respondent submitted a Renewal NOI to DEQ on November 16, 2021, and DEQ issued the Renewal NOC to Respondent on January 18, 2022, with a coverage date of November 1, 2021, and an expiration date of October 31, 2026.

12. On February 15, 2022, DEQ conducted a Construction Stormwater Inspection of the site in response to a complaint. The Notice of Coverage (NOC) and Stormwater Pollution Prevention Plan (SWPPP) were onsite and posted as required. The inspection revealed the following violations:

- a. No inspection reports were being retained onsite, and DEQ received no evidence that Site Inspections were being performed as specified in the Permit and the SWPPP (once every 14 days or after .25” rainfall). Failure to conduct Site Inspections in accordance with the SWPPP and retain inspection reports as part of the SWPPP at the construction site is a violation of Part II, Section A, Conditions 2.A, 4.N, and 4.N.3 of the Permit and Part II, Section B, Conditions 1.A. and 1.B of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
  
- b. No rain gauge was properly installed at the site. When the SWPPP inspection frequency is “[a]t least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.25 inches or greater,” a rain gauge must be maintained on-site. Failure to maintain a rain gauge on-site is a violation

of Part II, Section A, Condition 4.N.1.b of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- c. Stormwater controls at the down-gradient culverts, primarily on the east/southeast boundaries of the site, are absent or inadequate to prevent offsite migration of sediment. Failure to implement stormwater controls is a violation of Part I, Section B.3 of the Permit. Failure to maintain erosion and sediment controls is a violation of Part I, Section B, Condition 13.A and Part II, Section B, Condition 17.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Sediment has migrated off the site and is likely to discharge into and cause pollution to Duck Creek, which flows into Ferguson Lake, both of which are 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).
- e. Sediment that has escaped the site has not been removed. This is a violation of Part II, Section A, Condition 4.I.1.d of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On March 30, 2022, DEQ notified Respondent of the inspection results and requested a written response be submitted to DEQ by April 13, 2022. To date, no response has been received.

14. On December 20, 2022, DEQ conducted a Construction Stormwater Inspection of the site in response to a complaint. The SWPPP was onsite and posted as required. The inspection revealed the following violations:

- a. The NOC was not posted near the site entrance. Failure to post the NOC is a violation of Part II, Section A, Condition 2.D of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. A fuel container near the site entrance appeared to be leaking and had inadequate secondary containment. This is a violation of Part I, Section B, Condition 13.D.3 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Stormwater controls, specifically the silt fencing and rock check dams, around the culverts on the eastern and southeastern perimeter were in need of maintenance. Failure to maintain erosion and sediment controls is a violation of Part I, Section B, Condition 13.A and Part II, Section B, Condition 17.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- d. Large areas of the site are un-stabilized where no clearing, grading, excavating or other earth disturbing activities are occurring. DEQ communicated with on-site personnel and determined that no stabilization activities have been initiated since at least September of 2022. Part I, Section B, Condition 13.B of the Permit states that stabilization of disturbed areas must, at a minimum, be initiated immediately (unless weather conditions do not allow immediate initiation) whenever any clearing, grading, excavating or other earth disturbing activities have ceased. Failure to initiate stabilization of disturbed areas where activities have ceased is a violation of Part I, Section B, Condition 13.B of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. Sediment has been discharged or escaped from the construction site. DEQ observed sediment in the roadside ditch and turbid water being discharged from the site. Part II, Section A, Condition 4.I.1.d. of the Permit requires Respondent to implement minimum controls that include removing off-site accumulations of sediment before the next business day to minimize off-site impacts when sediment escapes the

construction site. Failure to take actions required to implement the required minimum controls for sediment is a violation of Part I, Section B, Condition 13.A and Part II, Section A, Condition 4.I of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- f. Collected stormwater flows from greater than ten (10) acres of the construction site are flowing towards a low area at the southeast corner of the property, which discharges to Duck Creek. Pursuant to Part II, Section A, Condition 4.I.3.a (1) of the Permit, common drainage locations that serve an area with ten (10) or more acres require a sediment basin where attainable. Where a sediment basin is not attainable, the permittee shall use smaller sediment basins or sediment traps. Where a sediment basin is un-attainable, natural buffer strips or other suitable and effective controls are required for all side slopes and down slope boundaries of the construction area. DEQ observed that the site lacked sufficient BMPs to prevent sediment from leaving the site near the southeast corner of the site. Respondent's failure to provide a sediment basin or maintain effective BMPs in the absence of a sediment basin is a violation of Part I, Section B, Condition 13.A and Part II, Section A, Condition 4.I.3.a.1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3). A sediment basin may be required.
- g. Sediment has migrated off the site and is likely to discharge into and cause pollution to Duck Creek, which flows into Ferguson Lake, both of which are 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).

- h. Sediment that has escaped the site has not been removed. This is a violation of Part II, Section A, Condition 4.I.1.d of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On January 25, 2023, DEQ notified Respondent of the inspection results and requested a written response be submitted to DEQ on or before February 8, 2023.

16. On March 10, 2023, DEQ notified Respondent via email that a response to the December 20, 2022 inspection had not been received. By this email DEQ requested that Respondent submit a written response to DEQ by March 15, 2023.

17. On March 13, 2023, DEQ conducted a Reconnaissance Inspection of the site in response to a complaint. The NOC and SWPPP were onsite and posted as required. The inspection revealed the following violations:

- a. Sediment has been discharged or escaped from the construction site. DEQ observed turbid water in Duck Creek and a discharge from the site. Failure to take actions required to implement the required minimum controls for sediment is a violation of Part I, Section B, Condition 13.A and Part II, Section A, Condition 4.I of the Permit. This is also violation of Ark. Code Ann. § 8-4-217(a)(2) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Sediment that has escaped the site has not been removed. This is a violation of Part II, Section A, Condition 4.I.1.d of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. There are large areas of un-stabilized soil throughout the site and erosion had occurred in these un-stabilized areas. Stabilization appears to have been attempted in some areas, but it was not maintained. Minor grass growth has taken place, but

hay that was placed in and around the southeast corner of the site has washed away. Disturbed areas where activity has ceased for more than fourteen (14) days have not been stabilized. This failure is a violation of Part I, Section B, Condition 13.B and Part II, Section A, Conditions 4.I.2.d and 4.I.2.e of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- d. Silt fencing around an inlet protection has failed and not been repaired. Failure to maintain effective erosion controls and sediment controls, including BMPs, is a violation of Part I, Section B, Condition 13.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- e. Dewatering activities at the northeast corner of the site resulted in the discharge of turbid water going under the road and into a private lake (Lake Ferguson). The discharge of turbid water from the site is a violation of Part I, Section B, Condition 13.C of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- f. Collected stormwater flows from greater than ten (10) acres of the construction site are flowing towards a low area at the southeast corner of the property, which discharges to Duck Creek. Pursuant to Part II, Section A, Condition 4.I.3.a.(1) of the Permit, common drainage locations that serve an area with ten (10) or more acres require a sediment basin where attainable. Where a sediment basin is not attainable, the permittee shall use smaller sediment basins or sediment traps. Where a sediment basin is un-attainable, natural buffer strips or other suitable and effective controls are required for all side slopes and down slope boundaries of the construction area. DEQ observed that the site lacks sufficient BMPs to prevent sediment from leaving the site near the southeast corner of the site. The permittee's



failure to provide a sediment basin or maintain effective BMPs in the absence of a sediment basin is a violation of Part I, Section B, Condition 13.A and Part II, Section A, Condition 4.I.3.a.1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3). A sediment basin may be required.

18. On March 27, 2023, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ within thirty (30) days of the date of the letter.

19. On March 27, 2023, Respondent submitted an updated SWPPP with plans to include additional sedimentation basins in the southeast corner of the site.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the NPDES Stormwater Construction General Permit, Permit Number ARR150000.
2. Respondent shall immediately implement Best Management Practices (BMPs) and correct the items referenced in the Findings of Fact Paragraphs 12, 14, and 17.
3. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ the plans, design, dimensions, specifications, and volume for the required sediment basin(s), along with details for the outlet structure developed by a Professional Engineer licensed in the state of Arkansas.
4. Within thirty (30) days of the effective date of this Order, Respondent shall submit to DEQ a comprehensive Corrective Action Report (CAR) that includes, but is not limited to, a detailed reporting of how the violations referenced above were corrected. The CAR shall include

photographs showing the improvements made at the site to correct the violations and prevent recurrences.

5. 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.

6. 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.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750.00), or one-half of the full civil penalty of Seven Thousand Eight Hundred Seventy-five Dollars (\$7875.00) 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. If Respondent violates any term of this Order, the full balance of Fifteen Thousand Seven Hundred Fifty Dollars (\$15,750.00) shall be payable immediately to DEQ. 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:

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.

8. Failure to meet any requirement or deadline of this Order constitutes a violation of 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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

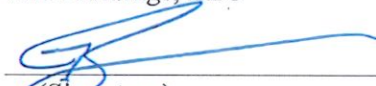
SO ORDERED THIS 21 DAY OF January, ~~2023~~ <sup>2024</sup> *efo*



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

APPROVED AS TO FORM AND CONTENT:

East End Holdings, LLC

BY:   
(Signature)

Rick Ferguson  
(Typed or printed name)

TITLE: member

DATE: 12-18-23