

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Troy Corder
d/b/a TD Granite & Marble
609 S. Little Avenue
Gentry, AR 72734

LIS No. 24- 033
Permit No. ARR001894
AFIN 04-02685

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

The issues herein having been settled by the agreement of Troy Corder, d/b/a TD Granite and Marble, (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 cut stone and stone product manufacturing facility (“facility”), SIC Code 3281, located at 15558 Airport Road, Siloam Springs, Benton County, Arkansas¹.
2. Respondent discharges industrial stormwater to an unnamed tributary of Sager Creek, thence to Sager Creek (Arkansas), and thence to Sager Creek (Oklahoma).
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

¹ Facility GPS location: 36° 11' 48.52" N; 94° 29' 08.60" W

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. 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 a 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. In accordance with 40 C.F.R. § 122.26(c), as adopted by APC&EC Rule 6, dischargers of stormwater associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(i-ix, xi), are required to obtain coverage under the NPDES Industrial Stormwater General Permit ARR000000 (General Permit). DEQ issued the General Permit on July 1, 2019, and the Permit expires on June 30, 2024.

10. On May 14, 2020, DEQ conducted a Reconnaissance inspection of the facility. The inspection revealed the following violations:

- a. Respondent is a sector E3 industry specializing in the cutting of decorative stone and therefore is an industry that must obtain coverage under the General Permit. At the time of the inspection, no stormwater permitting was in place. Therefore, all stormwater discharges were unpermitted, as Respondent had not obtained permit

coverage under the General Permit. This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Discharges of process water from cutting activities were occurring at this facility. Discharges of process water require separate coverage under an Individual Industrial Discharge Permit. The unpermitted process water discharges occurring at the facility at the time of the inspection are a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Deposits of fines from stone cutting were observed on the grounds adjacent to the discharge pipe. Placing of waste in a place likely to cause pollution to any waters of this state is a violation of Ark. Code Ann. § 8-4-217(a)(2).

11. On June 4, 2020, DEQ notified Respondent of the inspection results via letter and requested that Respondent submit a written response addressing the violations to DEQ by June 19, 2020.

12. On July 1, 2020, DEQ received Respondent's response to the violations cited in the May 14, 2020 inspection report.

13. On July 2, 2020, Respondent submitted a Notice of Intent (NOI) for coverage under the General Permit and a Stormwater Pollution Prevention Plan (SWPPP). DEQ issued coverage to Respondent under the General Permit, with Permit Tracking Number ARR001894 ("Permit"), with a coverage date of August 13, 2020, and an expiration date of June 30, 2024.

14. On August 19, 2020, DEQ notified Respondent by letter that the information submitted by Respondent on July 1, 2020, did not sufficiently address the violations cited in the May 14, 2020 inspection report. By this letter DEQ also requested documents for the planned Individual Industrial Discharge Permit or for Respondent to provide a timeline for the submittal of the permit application.

15. On August 31, 2020, Respondent submitted a response to DEQ's letter dated August 19, 2020. Respondent stated that their plans had changed and they determined that the best solution to the facility's discharge was to install a closed loop water reclamation system. The reclamation system would reduce water consumption at the facility, while also serving to completely eliminate the discharge of process water by the facility. Installation of the reclamation system was expected to be completed by October 15, 2020.

16. On September 29, 2020, DEQ sent Respondent a letter stating that the information submitted on August 31, 2020, did not sufficiently address the violations cited during the May 14, 2020 inspection. DEQ also requested that Respondent submit documentation demonstrating that the reclamation system was installed and that the facility was no longer discharging process water.

17. On November 4, 2020, DEQ acknowledged the October 16, 2020 correspondence from Respondent's consulting firm stating that the date for completion of the reclamation system had been changed to December 18, 2020. DEQ requested confirmation of the installation of the reclamation system by December 28, 2020.

18. On December 28, 2020, Respondent submitted documentation, including photographs, that the closed loop water reclamation system was installed and as a result, all discharges of process water had been eliminated.

19. On January 28, 2021, DEQ notified Respondent that the information provided sufficiently addressed the violations cited in the May 14, 2020 inspection report.

20. On November 10, 2022, DEQ conducted an Industrial Stormwater Inspection of the facility. The inspection revealed the following violations:

- a. Piles of fines from stone cutting were observed dumped on the ground outside of the facility and solids accumulated from discharges of process wastewater onto the

ground were observed at the facility. These conditions are violations of Parts 3.1.1, 3.1.4, and 3.1.10 of the Permit and therefore are violations of Ark. Code Ann. § 8-4-217(a)(3).

- b. Solid wastes were not covered or in a container at the time of the inspection. These conditions are a violation of Parts 3.1.2 and 3.1.10 of the Permit and therefore are a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. An unpermitted discharge of process wastewater was observed. The discharge of this process water is not authorized by Part 1.6 of the Permit. The discharge of stormwater mixed with non-stormwater is not authorized by this Permit. Discharge of process water is a violation of Part 1.8 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

21. On December 1, 2022, DEQ notified Respondent of the inspection results via letter and requested a written response addressing the violations be submitted to DEQ by December 15, 2022. DEQ also requested that the following information and documentation be submitted:

- a. The complete and most recent update of the Stormwater Pollution Prevention Plan (SWPPP).
- b. Visual inspection records from the year 2020 to the present.
- c. Annual comprehensive compliance evaluation inspection records from the year 2020 to the present.
- d. Stormwater Annual Reports (SWARs) from 2020 to the present with all laboratory bench sheets, Chain of Custody records, and calibration records (if applicable).

22. On December 30, 2022, Respondent submitted a response to the violations cited during the November 10, 2022 inspection.

23. On January 18, 2023, DEQ sent Respondent a letter stating that the information submitted on December 30, 2022, did not sufficiently address the violations cited during the November 10, 2022 inspection. DEQ also requested that Respondent submit additional information addressing the violations cited in the November 10, 2022 inspection to DEQ by February 1, 2023.

24. On January 31, 2023, Respondent submitted additional information addressing the violations cited in the November 10, 2022 inspection.

25. On March 13, 2023, DEQ notified Respondent by letter that the information provided on January 31, 2023, sufficiently addressed the violations cited in the November 10, 2022 inspection.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with all terms and conditions in the Permit.
2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Two Hundred Dollars (\$5200.00), or one-half of the full civil penalty of Two Thousand Six Hundred Dollars (\$2600.00) 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. Even if the conditions for receiving a reduced penalty of Two Thousand Six Hundred Dollars (\$2600.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Five Thousand Two Hundred Dollars (\$5200.00) and shall become due immediately and payable 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.

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 the 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 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.

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. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 21st DAY OF February, 2024.



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

APPROVED AS TO FORM AND CONTENT:

Troy Corder d/b/a TD Granite & Marble

BY: Troy Corder
(Signature)

Troy Corder
(Typed or printed name)

TITLE: Owner

DATE: 02/21/2024