

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Caddo Properties, LLC  
6423 Edgehill Circle  
Texarkana, AR 71854

LIS No. 24- 044  
Permit No. Unpermitted  
AFIN 55-00295

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 the Caddo Properties, 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 large construction site (“site”) located on Tranquil Lane, Glenwood, Pike County, Arkansas.
2. Pursuant to the federal Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, the National Pollutant Discharge Elimination System (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).

3. NPDES permit coverage is required for stormwater discharges associated with construction activity.<sup>1,2</sup> Respondent is subject to regulation pursuant to the NPDES program.

4. 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.

5. Ark. Code Ann. § 8-4-217(a)(3) provides:

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

...

(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].

6. 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.

7. 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.”

8. DEQ regulates stormwater discharges associated with construction activity pursuant to the NPDES Construction Stormwater General Permit, Permit Number ARR150000, (“General Permit”) with an effective date of November 1, 2021, and expiration date of October 31, 2026. Sites located on certain waters of the state are not eligible for coverage under the General Permit must obtain an Individual NPDES Permit for the regulated activities.

9. On January 3, 2023, DEQ received a complaint of unpermitted dredge and construction activities<sup>3</sup> on approximately twenty (20) acres immediately adjacent to the Caddo River.

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<sup>1</sup> 40 C.F.R. § 122.26(a)(1)(ii).

<sup>2</sup> Construction activity is defined in 40 C.F.R. § 122.26(b)(14)(x).

<sup>3</sup> <https://www.adeg.state.ar.us/downloads/WebDatabases/Complaints/030218-Comp.pdf>

10. On January 12, 2023, DEQ conducted a reconnaissance inspection<sup>4</sup> of the site and documented the following violations:

- a. Respondent is operating a large construction site (five acres or more disturbed) without the required stormwater permit. Failure to obtain the required permit before conducting construction activities is a violation of 40 C.F.R. § 122.26(a)(1)(ii), as incorporated by APC&EC Rule 6.104, and Ark. Code Ann. § 8-4-217 (b)(1)(E).
- b. Respondent removed the riparian vegetation along the banks of the Caddo River. The removal of the riparian vegetation along the banks of the Caddo River is a significant physical alteration of the habitat of the Caddo River. The Caddo River is an Extraordinary Resource Waterbody and an Ecological Sensitive Waterbody and, therefore, requires a minimum fifty (50) foot natural buffer zone to be maintained. Significant physical alterations of the habitat within Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, or Natural and Scenic Waterways is a violation of APC&EC Rule 2.304(A) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On January 25, 2023, DEQ notified Respondent of the inspection results and requested a written response to the violations be submitted to DEQ by February 25, 2023. Respondent has not submitted a response to the inspection.

12. On January 18, 2023, January 25, 2023, and February 13, 2023, Respondent submitted a Notice of Intent, Stormwater Pollution Prevention Plan, and other required documents, for coverage under the General Permit.

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<sup>4</sup> <https://www.adeg.state.ar.us/downloads/WebDatabases/InspectionsOnline/124342-Insp.pdf>

13. On July 10, 2023, Respondent subdivided the site for residential lots, indicating that additional construction activities are planned for this site.

14. On December 19, 2023, DEQ notified Respondent that because the receiving water of the construction stormwater runoff is the Caddo River, an Ecologically Sensitive Waterbody and Extraordinary Resource Water and known habitat of the endemic Paleback Darter, Caddo Madtom, and threatened Arkansas Fatmucket, Respondent is required to obtain an individual NPDES permit for the construction activities.<sup>5</sup>

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately cease all unpermitted activity at the site until proper permit coverage is obtained from DEQ.
2. Respondent shall immediately implement and document Best Management Practices (BMPs) within the construction site to ensure that sediment is not leaving the site. On or before the effective date of this Order, Respondent shall submit documentation, including a written summary and photographs, to DEQ of the BMPs installed at the site.
3. Respondent shall immediately re-establish the fifty (50) foot riparian vegetation zone along the banks of the Caddo River. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit documentation, including a written summary and photographs, to DEQ demonstrating the fifty (50) foot riparian vegetation zone along the banks of the Caddo River has been reestablished.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Dollars (\$8000.00), of which one-half

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<sup>5</sup>[https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARR157714\\_Caddo%20Properties%20LLC\\_Return%20Letter\\_20231219.pdf](https://www.adeg.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARR157714_Caddo%20Properties%20LLC_Return%20Letter_20231219.pdf)

of the full civil penalty of Four Thousand Dollars (\$4000.00) shall be SUSPENDED by DEQ 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 fully complies with the terms of this Order, the SUSPENDED civil penalty of Four Thousand Dollars (\$4000.00) shall be DISMISSED by DEQ. Payment of Four Thousand Dollars (\$4000.00) is due within thirty (30) calendar days of the effective date of this Order and 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 1<sup>st</sup> DAY OF MARCH, 2024.



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

APPROVED AS TO FORM AND CONTENT:

Caddo Properties, LLC

BY:   
(Signature)

Billy Krack  
(Typed or printed name)

TITLE: Member

DATE: 2/27/2024