

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

M&S Properties, LLC
49 East Main Street
Farmington, AR 72730

LIS No. 24- 063
Permit No. ARR000000 & ARR150000
AFIN 72-06228

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 M&S 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 construction site and a concrete storage and loading facility ("Facility") located at 49 East Main Street, Farmington, Washington County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. 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).

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 an NPDES permit.

5. DEQ regulates stormwater discharges associated with construction activity pursuant to the NPDES Stormwater Construction General Permit, Permit Number ARR150000 (“Construction Permit”). DEQ issued the Construction Permit on May 4, 2021, with an effective date of November 1, 2021, and an expiration date of October 31, 2026.

6. Respondent’s activities at the site fall within the definition of “Construction Activities” in Part I, Section A of the Construction Permit, making the site a “Construction Site” as defined by the Construction Permit. In accordance with the Construction Permit and APC&EC Rule 6, Respondent is required to have permit coverage for stormwater discharges associated with construction activity.

7. DEQ regulates stormwater discharges associated with industrial activity pursuant to the NPDES Stormwater Industrial General Permit, Permit Number ARR000000 (“Industrial Permit”). DEQ issued the Industrial Permit on November 6, 2018, with an effective date of July 1, 2019, and an expiration date of June 30, 2024.

8. Respondent’s activities at the site fall within the definition of “Industrial Activities” in Part I, Section A of the Industrial Permit, making the site an “Industrial Site” as defined by the Industrial Permit. In accordance with the Industrial Permit and APC&EC Rule 6, Respondent is required to have permit coverage for stormwater discharges associated with industrial activity.

9. 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].

10. 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.

11. 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.”

12. 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 or an individual permit.

13. On April 24, 2023, DEQ conducted a construction stormwater inspection of the Facility. The inspection revealed the following:

- a. Respondent is constructing a parking lot and office building at the Facility.
- b. Respondent is operating under automatic coverage of the Construction Permit— Small Site Construction Stormwater General Permit, ARR150000.
- c. The Stormwater Pollution Prevention Plan (SWPPP) did not contain a site map, in violation of Part II, Section A, Subsection 2, Item B of the Construction Permit.
- d. Stormwater inspection records were not present, in violation of Part II, Section A, Subsection 4, Item N.3 of the Construction Permit.

12. On April 26, 2023, DEQ conducted a reconnaissance inspection of the industrial activity occurring at the Facility. The inspection revealed the following:

- a. Respondent is using the Facility for storing and loading concrete and related materials.
- b. Preexisting concrete mixing infrastructure was present, though Respondent stated that all mixing activity occurred off-site.
- c. Activity at the Facility requires coverage under the Industrial Permit—Industrial Stormwater General Permit, ARR000000.
- d. Respondent is operating without Industrial Permit coverage, in violation of Ark. Code Ann. § 8-4-217(b)(1)(C).

13. On May 31, 2023, DEQ notified Respondent of the results of the April 24, 2023 and April 26, 2023 inspections via letter and requested written responses addressing the violations be submitted to DEQ by June 15, 2023 and June 30, 2023, respectively.

14. To date, neither inspection response has been submitted, and Respondent has not submitted the required documentation to receive coverage under the Industrial Permit.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a complete Notice of Intent and any associated permit fees to DEQ for coverage under the Industrial Permit.
2. Respondent shall comply with the NPDES Industrial Stormwater General Permit, ARR000000 with the effective date of July 1, 2019, until DEQ issues a Notice of Coverage to Respondent.
3. On or before the effective date of this Order, Respondent shall submit written responses to the April 24, 2023 and April 26, 2023 inspections.

4. Respondent shall comply with the NPDES Stormwater Construction General Permit AR150000 including all SWPPP and record keeping requirements.

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 one (1) year (totaling twelve (12) reports) or until the Construction 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 Three Thousand Eight Hundred Dollars (\$3800.00), or one-half of the full civil penalty of One Thousand Nine Hundred Dollars (\$1900.00) 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:

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.

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 which 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, 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.

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 No. 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) calendar 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 No. 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 which 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 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.

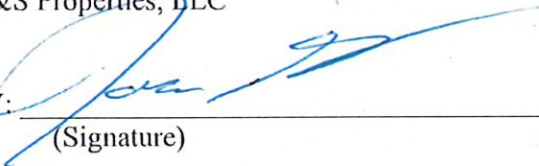
SO ORDERED THIS 15th DAY OF April, 2024.



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

APPROVED AS TO FORM AND CONTENT:

M&S Properties, LLC

BY: 
(Signature)

Jason Smith
(Typed or printed name)

TITLE: PM

DATE: 4.29.24