

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Newrays One, LLC
3 Alton Lane
Little Rock, AR 72211

LIS No. ~~24~~-25-002
Permit No. unpermitted
AFIN 23-01373

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 Newrays One, 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 for a cryptocurrency mining facility (“site”) located at 431 Highway 285 North, Damascus, Faulkner County, Arkansas.
2. Respondent discharges stormwater to a manmade ditch, thence to an Unnamed Tributary, thence to Cadron Creek, thence to the Arkansas River.
3. Respondent is subject to regulation pursuant to the National Pollutant Discharge Elimination System (NPDES).

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. 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.

7. DEQ regulates discharges associated with non-contact cooling water, cooling tower blowdown, and boiler blowdown wastewater pursuant to the NPDES Non-contact Cooling Water, Cooling Tower Blowdown, and Boiler Blowdown Facilities Located within the State of Arkansas General Permit, Permit Number ARG250000 (“Permit ARG250000”). DEQ issued Permit ARG250000 on May 26, 2022, with an effective date of December 1, 2022, and an expiration date of November 30, 2027.

8. 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

9. 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.

10. 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.”

11. On April 12, 2023, DEQ conducted a Reconnaissance Inspection of the site. DEQ determined that Respondent was operating without coverage under the Construction Stormwater General Permit (“General Permit”), in violation of the APC&EC Rule 6.203 and Ark. Code Ann. § 8-4-217(b)(1)(C) and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On May 19, 2023, DEQ notified Respondent of the inspection results. The notification requested that Respondent submit a response to the inspection no later than June 2, 2023. Respondent failed to submit a response to the inspection by the due date.

13. On August 24, 2023, DEQ again notified Respondent of the inspection results, requesting a response to the April 12, 2023, inspection be submitted no later than September 8, 2023.

14. On August 28, 2023, DEQ conducted a Reconnaissance Inspection of the site. DEQ observed that Respondent had installed a closed-loop water curtain cooling system for data processing equipment. The system is comprised of twenty-one (21) individual cooling curtains. DEQ observed discharges of non-contact cooling water from the following cooling units: C4, C5, C6, C7, C8, C9, C10, C13, C14, C15, C16, and C19. Additionally, DEQ observed seepage from the base of the constructed pads between cooling units C5 and C6, and C7 and C8, and the constructed pads at cooling units C5 and C7. DEQ also observed an accumulation of cooling water from the discharge occurring at cooling unit C10. The discharge of non-contact cooling water must be authorized by Permit ARG250000 or an individual NPDES permit. Failure to obtain coverage

under Permit ARG250000 or an individual NPDES permit for the discharge of non-contact cooling water is a violation of Permit ARG250000 and Ark. Code Ann. § 8-4-217(b)(1) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On September 5, 2023, Respondent provided DEQ with a construction plan diagram and the correct mailing and physical addresses for the site.

16. On September 8, 2023, Respondent submitted a response to the April 12, 2023, inspection. In the response, Respondent stated that a Notice of Coverage had been completed and posted at the site entrance and a Stormwater Pollution Prevention Plan had been developed and implemented.

17. On October 16, 2023, DEQ notified Respondent of the inspection results. On December 14, 2023, DEQ received Respondent's response to the violations cited in the inspection report. With that response, Respondent submitted documentation demonstrating that the discharges of non-contact cooling water have ceased.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. If Respondent has not yet completed construction activities and stabilization at the site, then Respondent shall immediately comply with all General Permit requirements and shall maintain satisfactory BMPs to mitigate and prevent sediment-laden stormwater from leaving the site.
2. If Respondent has not yet completed construction activities and stabilization at the site, then on or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter, 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.

3. Upon completion of construction activities at the site and stabilization of disturbed areas, as required by the General Permit, Respondent shall submit a final report to DEQ demonstrating that stabilization has been achieved in accordance with the requirements of the General Permit.

4. This Order shall automatically close upon DEQ's receipt and approval of Respondent's final report. DEQ shall send Respondent written confirmation of the closure of this Order.

5. On or before the effective date of this Order, Respondent shall certify to DEQ that all discharges of non-contact cooling water have ceased, or Respondent shall submit a Notice of Intent to obtain coverage under Permit ARG250000.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Thirteen Thousand Two Hundred Dollars (\$13,200.00), or one-half of the full civil penalty of Six Thousand Six Hundred Dollars (\$6,600.00) 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 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.

8. 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.

9. 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.

10. 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.

11. 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) 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 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.

12. 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.


13. 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 12⁰⁹ DAY OF December, 2024.

Bailey Taylor
BAILEY M. TAYLOR, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Newrays One, LLC

BY: 
(Signature)

yunpeng li
(Typed or printed name)

TITLE: Manager

DATE: 12/9/2024