

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Blue Springs Holding Company, LLC  
3496 Pasofino Loop  
Springdale, AR 72764

LIS No. ~~18~~ 19-001  
Permit No. ARR155472  
AFIN 72-02313

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

The issues herein having been settled by the agreement of Blue Springs Holding Company, LLC ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ or "Department"), 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") located on South Lake Road, Elm Springs, Washington County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES). ADEQ issued Stormwater Construction General Permit, Permit Number ARR150000, on May 4, 2016 with an effective date of November 1, 2016, and an expiration date of October 31, 2021.

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. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (“the Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

5. On May 4, 2016, ADEQ granted Respondent coverage under General Permit Number ARR150000 by issuing NPDES General Permit Tracking Number ARR155472 (“Permit”) to Respondent with an effective date of January 4, 2017, and an expiration date of October 31, 2021.

6. 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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 regulation 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. On April 18, 2017 the Department received an anonymous complaint that sediment was “running off” from the Site.

10. On April 19, 2017, the Department conducted a routine compliance evaluation inspection of the Site. The inspection revealed the following violations:

- a. The Notice of Coverage form was not posted at the Site entrance. This failure violated Part II, Section A.2.D of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- b. The Storm Water Pollution Prevention Plan (SWPPP) was not signed at the time of the inspection. This condition violated Part II, Section A.2.A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- c. The silt fence was not installed around the entire perimeter of the Site in accordance with the SWPPP. This failure violated Part II, Section A.4.G of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- d. The rock check dam at the Northwest corner was not installed as per the SWPPP, and the silt fence along the west side that was installed in lieu of the rock check dam was not properly installed or maintained. These failures violated Part II, Section A.4.G and Part II, Section B.17.A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- e. Off-site tracking of sediment was observed on the South Lake Road. Part II, Section A.4.H.2 of the permit requires that both the entrance and exit be stabilized or vehicle tire washing occur to minimize off-site tracking. Failure to sufficiently stabilize the entrance and exit or install a truck tire wash area as indicated on the SWPPP is a violation of Part II, Section A.4.H.2 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

- f. Sediment was observed as having eroded offsite into ditches via runoff on the north and south sides of the Site and onto offsite roadways via tracking from vehicles and the accumulated sediment had not been recovered. These conditions violated Part II, Section A.4.G.1.d of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
  - g. Site inspection records were not available onsite at the time of the inspection. This failure violated Part II, Section A.4.L.3 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
  - h. A fuel tank was observed onsite that was not accounted for in the SWPPP. This condition violated Part II, Section A.4.H.6 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
11. On April 27, 2017, the Department notified Respondent of the inspection results.
  12. On May 1, 2017, the Department received an anonymous complaint that large amounts of sediment were spilling into roadside ditches and onto neighboring property from the Site.
  13. On May 1, 2017 the Department conducted a complaint investigation of the Site. Large amounts of sediment were observed in the ditch along Lake Road and on a neighboring property. Sediment was also observed filling a culvert along the road.
  14. On May 10, 2017, the Department notified Respondent of the investigation results.
  15. On May 25, 2017, the Department received an email from Respondent that addressed the actions taken to correct the violations noted during the April 19, 2017 and May 20, 2017 inspections.

16. On June 1, 2017, and on June 27, 2017, the Department notified Respondent that additional information and photographs were required to demonstrate that the violations had been addressed sufficiently. The Department received no response to either letter.
17. On August 17, 2017, the Department notified Respondent that no response to the letter dated June 1, 2017 had been received. The Department again requested additional information and photographs to demonstrate that the violations had been addressed sufficiently. The Department requested Respondent to provide this additional information within seven (7) days of receipt of the letter.
18. On August 24, 2017, the Department received a written response to the Department's letter of August 17, 2017.
19. On August 24, 2017, the Department notified Respondent that the response to ADEQ's inspection follow-up request of August 17, 2017 was satisfactory.
20. On January 31, 2018, the Department received a complaint that construction had resumed at the Site and sediment from the Site was being deposited on neighboring property.
21. On February 9, 2018, the Department conducted a compliance evaluation inspection of the Site in response to the complaint. The inspection revealed the following violations:
  - a. The Notice of Coverage form was not posted at the Site entrance. This failure violated Part II Section A.2.D of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
  - b. The SWPPP was not signed at the time of the inspection. This failure is a violation of Part II, Section A.2.A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

- c. The silt fence and vegetative buffer indicated on the site map of the SWPPP were not installed and multiple wattles, an earthen berm, a rock dam, a drainage ditch, and a box culvert were observed in their steads which were not indicated on the SWPPP. This failure violated Part II, Section A.4.G of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- d. The sedimentation basin had not been constructed as indicated in the SWPPP. This failure violated Part II, Section A.4.G of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- e. The construction entrance was not stabilized. This failure is a violation of Part II, Section A.4.H.2 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- f. Multiple phase II activities, such as storm sewer system and utilities installation, clearing, and grading have occurred without the emplacement of the sedimentation basin or sediment traps identified in the SWPPP. Such activities violated Part II, Section B.3 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- g. The installed wattles and silt fencing were in need of significant maintenance and repair. These conditions violated Part II, Section B.17.A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- h. Solid waste was observed on the ground and no solid waste containers were observed onsite. This condition violated Part II, Section A.4.H.1 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- i. Inspection records were not being maintained. This failure violated Part II, Section A.4.L.3 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

j. A fuel tank was observed onsite with the secondary containment vessel's plug removed allowing petroleum based products to spill out onto the surrounding soil. This condition violated Part II, Section A.4.H.6 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

22. On February 26, 2018, the Department notified Respondent of the inspection results and requested a written response addressing the violations. The Department received a response on March 16, 2018. The Department determined that the response did not sufficiently detail the corrective actions taken to address the violations noted in the inspection report.

23. On March 26, 2018, the Department requested additional information.

24. On May 4, 2018, the Department notified Respondent that no response to the letter dated March 26, 2018, had been received and requested a written response addressing the violations identified during the February 9, 2018 inspection by May 19, 2018. To date, the Department has not received a response to this notification.

25. On July 18, 2018, ADEQ received a Notice of Termination (NOT) from Respondent requesting termination of the stormwater construction Permit. On July 31, 2018, ADEQ returned Respondent's NOT, in part because the Permit was issued for a large common plan of development. ADEQ notified Respondent the NOT can be resubmitted once all construction including landscaping and lot development has been completed and all the lots are sold.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with the terms and conditions of the Permit.
2. On or before the effective date of the Order, Respondent shall provide a response to ADEQ letter of March 26, 2018. Respondent shall also provide ADEQ an updated site map of

the common plan of the development depicting the current ownership and the construction status of each lot in the subdivision.

3. Respondent shall submit quarterly progress reports to the Department to begin within thirty (30) days of the effective date of this Order, and thence quarterly thereafter. Each quarterly progress report shall document the actions taken to ensure that silt and sediment are not leaving the Site and include copies of the Site inspection reports and photographs documenting BMPs. The quarterly progress reports shall be submitted to ADEQ until the project is either complete or Permit coverage has been terminated and the site has the appropriate 80% documented ground cover, whichever is first.

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 Five Hundred Dollars (\$8,500.00) or one-half of the full civil penalty of Four Thousand Two Hundred Fifty Dollars (\$4,250.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days receipt of this Order. Even if the conditions for receiving a reduced penalty of Four Thousand Two Hundred Fifty Dollars (\$4,250.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Eight Thousand Five Hundred Dollars (\$8,500.00) and shall become due immediately and payable to ADEQ. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payment of the penalty shall be made payable to the Arkansas Department of Environmental Quality, and mailed to the attention of:

ADEQ, 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, ADEQ 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 said Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to ADEQ 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

6. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

7. 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 ADEQ, 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.

8. ADEQ 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

9. All requirements by the Order and Agreement are subject to approval by ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take additional actions specified by ADEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

10. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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 Regulation 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.

11. Nothing in this Order shall be construed as a waiver by ADEQ 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.

12. 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 31 DAY OF December, 2018.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Blue Springs Holding Company, LLC

BY: [Signature]  
(Signature)

Norm Ditch  
(Typed or printed name)

TITLE: President

DATE: 12-20-18