


ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

LEGAL DIVISION MEMORANDUM

To: Doug Szenher, Public Affairs Supervisor
From: Benjamin Jones, Attorney 
Date: June 19, 2008
Subject: PUBLIC NOTICE--EMERGENCY ORDER

Enclosed is an Emergency Order of the Director for public notice, titled:

IN THE MATTER OF: **LIS 08-069**

B & H RESOURCES, LLC, IZARD COUNTY, ARKANSAS

Enclosure

cc: Teresa Marks, Director
Karen Bassett, Chief Deputy Director
Steve Martin, Deputy Director
Ellen Carpenter, Legal Policy Advisor
Mark Ferguson, Chief, Legal Division
Dean VanDerhoff, Emergency Response Prog. Coord. Sect. Mgr.
Michael Parette, Emer. Svcs. Oper.
Benjamin Jones, Attorney
Michael O'Malley, Administrative Hearing Officer
All Division Chiefs
Rayburn Finley, Izard County Judge
Arkansas Municipal League
ADEM
Andrew Parker, Governor's Office

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LIS NO. 069

**B & H RESOURCES, LLC
IZARD COUNTY, ARKANSAS**

**RE: MASSIVE SEDIMENT LOSS DUE TO CONSTRUCTION ACTIVITY AT
PROPOSED MINING SITE OF B & H RESOURCES, LLC.**

EMERGENCY ORDER OF THE DIRECTOR

The Director of the Arkansas Department of Environmental Quality (hereinafter ADEQ) has determined that emergency conditions exist at a proposed mining site owned by B & H Resources, LLC (hereinafter B & H). The proposed mining site is located next to Mill Creek in IZARD County, Arkansas. Mill Creek is a tributary of Piney Creek which flows into the White River. Mill Creek meets Piney Creek approximately two miles above the White River. The "911" address provided to ADEQ by B & H for the proposed mining site is Highway 58 Brockwell, Arkansas.

B & H applied for a mining permit to allow the company to mine sand from the proposed mining site. The application for the mining permit is still being considered by the Mining Division of ADEQ. The proposed mining site also needs permits from the Water Division of ADEQ. Unless otherwise exempted, construction activities on sites greater than one acre fall under the coverage of Permit Number AR150000, the general stormwater permit for construction activity located in the State of Arkansas. Active and inactive mining sites fall under the coverage of Permit Number ARR000000, the general stormwater permit for industrial activities located in Arkansas. To this date, B & H has not received authorization to discharge stormwater under Permit Number ARR000000 or Permit Number AR150000. Constructing, installing, or operating any building, plant,

works, establishment, or facility which would result in a discharge of waste without a permit from ADEQ is an unlawful action under Arkansas Code Annotated Section 8-4-217(b)(1).

It was brought to the attention of ADEQ that B & H did a significant amount of dirt work and land clearing at the proposed mining site. This activity included clear cutting timber, clearing of stumps, and clearing residual vegetation. As a result of the land clearing B & H conducted, the riparian vegetation along the banks of Mill Creek was removed. ADEQ inspectors found that the removal of the riparian vegetation has resulted in massive bank erosion on Mill Creek for approximately one mile from the proposed mining site. Sediment from the banks has impacted both Mill Creek and Piney Creek. The inspectors observed that the sediment has smothered the gravel substrate in parts of both creeks and the natural occurring pools in the creeks are filled in with sediment. ADEQ inspectors that have been to the proposed mining site did not observe any type of erosion or sediment controls in place.

The large amounts of sediment that are being allowed to wash off of the banks are unlawful actions under Arkansas Code Annotated Section 8-4-217. This section states that causing pollution to waters of the state and violating regulations adopted by the Arkansas Pollution Control and Ecology Commission are both unlawful actions. The activities conducted by B & H have clearly caused pollution to Mill Creek and Piney Creek. In addition to this the activities of B & H have resulted in various violations of Regulation 2 of the Arkansas Pollution Control and Ecology Commission. Nearly every body of water in Arkansas is assigned a designated use under Regulation 2. Mill Creek and Piney Creek both have a fisheries use designation. The sediment from the eroding

banks of Mill Creek can and will impair the use of Mill Creek and Piney Creek as a fishery in a number of ways. The sediment from the proposed mining site also violates the requirement of Regulation 2 that prohibits any distinctly visible increase in turbidity of receiving waters from an industrial activity.

Therefore, pursuant to authority provided by the Arkansas Water and Air Pollution Control Act, (A.C.A. § 8-4-201 et seq.); the provisions of Ark. Code Ann. § 8-1-202(b)(2)(C), and Ark. Code Ann. § 8-4-220, and the regulations promulgated there under, the Director makes the following Findings of Fact and orders that the following actions be taken immediately to abate and contain the emergency conditions.

FINDINGS OF FACT

1. B & H owns a parcel of land located next to Mill Creek in IZARD County, Arkansas. B & H has applied for a mining permit to authorize it to mine sand at the site. B & H does not have authorization to discharge stormwater under Permit Number ARR000000 or Permit Number ARR150000. Constructing, installing, or operating any building, plant, works, establishment, or facility which would result in a discharge of waste without permit from ADEQ is an unlawful action under Arkansas Code Annotated Section 8-4-217(b)(1).

2. B & H conducted dirt work and land clearing at the proposed mining site. During the course of the dirt work and land clearing, B & H cleared the riparian vegetation on the banks of Mill Creek. The removal of the riparian vegetation resulted in massive bank erosion of Mill Creek approximately a mile long.

3. On June 13, 2008, ADEQ inspectors visited the proposed mining site. The inspectors observed that sediment from the eroded banks had impacted both Mill Creek

and Piney Creek. The sediment had smothered the gravel substrate of the creeks and filled in pools located in the creeks. The area in the creeks affected by the sediment start at the proposed mining site on Mill Creek and follow Mill Creek down to an area below the confluence of Mill Creek and Piney Creek.

4. The sediment from the erosion of the banks is pollution as defined at Arkansas Code Annotated Section 8-4-102(6). The erosion of the banks was caused by the removal of the riparian vegetation conducted by B & H. Causing pollution in waters of the state is an unlawful action under Arkansas Code Annotated Section 8-4-217(a)(1). The sediment can and will impair the fisheries use of the creeks and cause increased turbidity in the creeks. These are violations of Regulation 2 of the Arkansas Pollution Control and Ecology Commission. Violating a regulation adopted by the Arkansas Pollution Control and Ecology Commission is an unlawful action under Arkansas Code Annotated Section 8-4-217(a)(3).

5. Based upon the above-listed facts, the Director has determined that an emergency exists requiring immediate action to protect the public health and welfare and issues the following Order in accordance with A.C.A. § 8-1-202(b)(2)(C) and A.C.A. § 8-4-220.

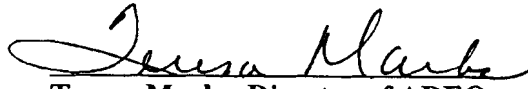
ORDER FOR REMEDIAL ACTION

1. The Director orders B & H to cease any and all dirt work, land clearing, or construction activity at the proposed mining site that may result in further erosion to the banks of Mill Creek, that may result in an increase of turbidity in Mill Creek and Piney Creek, or that may increase the amount sediment discharged to Mill Creek or Piney Creek.

2. The Director orders B & H to submit to ADEQ a detailed work plan and work schedule explaining the actions and methods B & H will implement to abate and remediate the massive bank erosion on Mill Creek at the proposed mining site and how B & H will address and remediate the excess sediment in Mill Creek and Piney Creek. The work plan is subject to review and final approval by ADEQ before B & H may commence any remedial operation. The work plan is to be submitted to Benjamin T. Jones at ADEQ by the close of business on June 23, 2008.

3. Nothing in this Order shall limit the rights of ADEQ to issue further orders or to pursue any further enforcement actions for removal, remediation, penalties, and/or costs from any party, as allowed by law.

DATED: June 19th, 2008


Teresa Marks, Director of ADEQ