

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Waste Water Management, Inc.
d/b/a Shadow Ridge Wastewater Treatment Facility
P.O. Box 524
Vilonia, AR 72173

LIS No. 17- 066
Permit No. AR0050466
AFIN 23-00650

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 the Waste Water Management, Inc. (“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 wastewater treatment facility, called Shadow Ridge Subdivision Wastewater Treatment Facility (“facility”) located on the east side of U.S. Highway 65, approximately 2.5 miles north of the intersection of U.S. Highway 65 and Interstate 40, in Faulkner County, Arkansas.
2. Respondent’s facility discharges treated wastewater to the East Fork of Cadron Creek, which has a designation as an Extraordinary Resource Waterway of the State of Arkansas, thence into Cadron Creek, thence into the Arkansas River in Segment 3D of the Arkansas River Basin.

3. The facility is regulated 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. 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.
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 to “any person that violates any provision of this chapter and regulations, rules, permits, or plans issued pursuant to this Chapter.”
8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”
9. NPDES Permit Number AR0050466 Permit was renewed effective on March 1, 2012. On August 8, 2014, the Permit was modified due to a change in ownership. The Permit expired on February 28, 2017.

Permit Renewal

10. According to Part III, Section D, Item 10 of the Permit, Respondent must submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit, in order to continue activity regulated by the Permit after its expiration date.

11. On March 3, 2016, and again on June 1, 2016, the Department notified Respondent via certified letter that Respondent's Permit would expire on February 28, 2017, and a complete renewal application must be received by the Department no later than September 1, 2016, to continue discharging wastewater after the expiration date of the existing Permit.

12. Respondent did not submit a Permit renewal application by September 1, 2016. That is a violation of Part III, Section D, Item 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On September 15, 2016, ADEQ received Respondent's Permit renewal application, and Respondent provided additional information on October 17, 2016. On October 20, 2016, ADEQ sent Respondent correspondence stating that the renewal application was administratively complete.

14. On February 14, 2017, ADEQ notified Respondent that the renewal application for AR0050466 wastewater treatment plant permit had not been received within 180 days of permit expiration as required by 40 CFR Part 122.21 (d), APC&EC Reg. 6.201, and Permit AR0050466, Part III, Section D, Condition 10. ADEQ also stated that Respondent may submit a written request to continue Permit AR0050466 until the effective date of its permit renewal if Respondent acknowledges its violation and its obligations to comply with the permit until the effective date of its permit renewal.

15. On February 15, 2017, Respondent submitted a written request to continue Permit AR0050466 until the effective date of its permit renewal and acknowledged its violation and its obligations to continue complying with the permit until the effective date of its permit renewal.

16. On February 16, 2017, the Department granted Respondent's request to continue Permit AR0050466 until the effective date of its permit renewal.

17. On July 6, 2017, the Department issued a renewal Permit AR0050466 to Respondent with an effective date of August 1, 2017.

Effluent Violations

18. On May 12, 2015, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by the facility in accordance with the Permit. Respondent reported in these DMRs violations of the permitted effluent limits for Total Suspended Solids, Ammonia Nitrogen, Fecal Coliform, Biological Oxygen Demand, and pH.

19. As a result of the review, the Department sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the effluent violations that were reported. That CAP was due on June 12, 2015. Respondent failed to submit the CAP by the requested deadline.

20. On June 30, 2015, ADEQ contacted the Respondent about the delinquent CAP. The Respondent told ADEQ the CAP would be submitted by July 17, 2015. To date, ADEQ has not received the requested CAP.

21. On December 31, 2016, the Department conducted another review of certified DMRs submitted by the facility in accordance with the Permit. These DMRs revealed violations of the permitted effluent limits as detailed in Part 1, Section A of the Permit for four (4) pollutants from

August 1, 2014 to July 31, 2017. A total of twenty-four (24) violations were reported for those four (4) pollutants as listed below:

- a. Seven (7) violations for Total Suspended Solids;
- b. Two (2) violations for Ammonia Nitrogen;
- c. Six (6) violation for Fecal Coliform and;
- d. Nine (9) violations for Biological Oxygen Demand, Carbonaceous [5-day, 20 C].

22. Each of these twenty-four (24) discharge limitation violations listed above constitutes a separate permit violation, and therefore constitute twenty-four (24) separate violations of Ark. Code Ann. § 8-4-217(a)(3) and Ark. Code Ann. § 8-4-103(c)(1)(B).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to ADEQ, for review and approval a comprehensive CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than December 31, 2018. The CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 21 and 22, above, and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date of December 31, 2018 contained in the CAP. The approved CAP, milestone schedule, and final compliance date of December 31, 2018 shall be fully enforceable as terms of this Order.

2. On or before the fifteenth day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, the Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with

final permitted effluent limits.

3. Respondent shall submit written documentation certified by a P.E. to the Department that all violations cited herein have been corrected and the facility is in compliance with the Permit no later than January 31, 2019.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Eight Hundred Fifty Dollars (\$5,850.00) or one-half of the full civil penalty of Two Thousand Nine Hundred Twenty Five Dollars (\$2,925.00) if this Order is signed and returned to the ADEQ's Office of Water Quality, Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, prior to September 5, 2017. 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:

Arkansas Department of Environmental Quality
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.

4. 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, the 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 |

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

5. 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 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.

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

7. All requirements in 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 adequately

respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

8. 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.

9. 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.

10. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer 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 19 DAY OF September, 2017.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Waste Water Management, Inc.

BY: [Signature]
(Signature)

Alan McEntee
(Typed or printed name)

TITLE: president

DATE: 9-6-17