

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Westwood Village Sewer Facilities Board
P.O. Box 4139
Hot Springs, AR 71914

LIS No. 17-084
Permit No. AR0044172
AFIN 26-00112

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 Westwood Village Sewer Facilities Board ("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 plant ("facility") located at 300 Lodge Road, Hot Springs, Garland County, Arkansas.
2. Respondent discharges treated wastewater to Lake Hamilton, an impoundment of the Ouachita River, in Segment 2F of the Ouachita River Basin.
3. Respondent 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 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), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. NPDES Permit Number AR0044172 was issued to Respondent on November 21, 2011. The Permit became effective on December 1, 2011, and expired on November 30, 2016.

10. A permit renewal application was received on April 11, 2016, with additional information received on May 27, 2016 and June 1, 2016. The application was determined to be administratively complete on June 28, 2016. APC&EC Regulation 6.201 and 40 C.F.R. § 122.6, as adopted by APC&EC Regulation 6.104, only allows for the continuation of expired permits pending issuance of a renewal permit if the permittee has submitted a timely (i.e., 180 days prior to the permit expiration date) and complete application. Therefore, ADEQ’s receipt of the completed application on June 1, 2016, prior to June 3, 2016, (the 180th day before the permit expiration date), administratively continued the Permit until the renewal permit can be issued by the Department.

11. Respondent and ADEQ previously entered into Consent Administrative Order (CAO) LIS 11-154 on September 23, 2011, for permit effluent violations. During the compliance review for the permit renewal, the Department recognized a pattern of continuing non-compliance of the same parameters. Pursuant to CAO LIS 11-154, a Corrective Action Plan (CAP) was submitted on September 9, 2011, and ADEQ approved the CAP on September 23, 2011.

12. On September 28, 2015, ADEQ sent Respondent a letter addressing a deficient discharge monitoring report (DMR) and non-compliance report (NCR) for the reporting period August 31, 2015, and specifying the information required on all NCR submittals. The corrected reports were due to the Department by October 16, 2015.

13. Respondent submitted the DMRs and NCRs to ADEQ on October 11, 2016.

14. On October 11, 2016, ADEQ and Respondent met at the Department to discuss Respondent's history of effluent violations, Sanitary Sewer Overflow (SSO) violations, and CAOs and how Respondent planned to bring the facility into and maintain compliance with the permit effluent limits. ADEQ received updated information from Respondent on personnel changes and contact phone numbers.

15. On October 21, 2016, ADEQ conducted a review of the certified DMRs submitted by the Respondent in accordance with the Permit. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I Section A of the Permit from August 1, 2014 through July 31, 2017:

- a. Twenty-Eight (28) violations for Carbonaceous Biochemical Oxygen Demand (CBOD₅),
- b. Thirty-one (31) violations for Fecal Coliform Bacteria,
- c. Thirty-two (32) violations for Ammonia Nitrogen(NH₃-N),
- d. One (1) violation for Dissolved Oxygen,

- e. Two (2) violations for pH, and
- f. Thirty (30) violations for Total Suspended Solids.

16. Each of these 124 discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of 124 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

17. The Department conducted a review of the Sanitary Sewer Overflow (SSO) Reports submitted in accordance with the Permit for the period of January 1, 2013 through October 31, 2016. That review indicated that Respondent reported six (6) SSOs totaling more than 50,650 gallons. All SSOs are prohibited and considered unpermitted discharges pursuant to Part II, Sections 5(A) and (B) of the permit. Such overflows violate Part II, Sections 5(A) and (B) of the Permit and therefore violate Ark. Code Ann. §8-4-217(a)(3).

18. On November 2, 2016, ADEQ sent a letter requesting Respondent to consult with a Professional Engineer (PE) for the purpose of developing a new CAP to address effluent violations and SSO violations. That CAP was received by ADEQ on January 31, 2017. Upon initial review of the CAP, ADEQ noted the document lacked a comprehensive discussion of effluent violations over the past three (3) years, a milestone schedule, and a proposed final compliance date for the project to meet permit limit requirements.

19. On January 31, 2017, the Department responded to the PE and requested a revised CAP containing the aforementioned deficiencies. The Department also sent a copy of the effluent violations for the past three (3) years to the PE and Respondent for their review.

20. On February 8, 2017, ADEQ received a revised CAP.

21. On August 8, 2017, ADEQ sent a letter to Respondent approving the revised CAP with a final compliance date of December 31, 2018.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS-11-154 will be closed.
2. Upon the effective date of this Order, the CAP, milestone schedule, and final compliance date of December 31, 2018 shall be fully enforceable as terms of this Order.
3. Within thirty (30) calendar days of 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 correcting the violations listed in the Findings of Fact.
4. On or before January 31, 2019, Respondent shall provide written certification to ADEQ Office of Water Quality, Enforcement Branch the violations cited in the Findings of Fact have been corrected and the facility is in compliance with the requirements of its permit as of December 31, 2018.
5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Three Thousand Nine Hundred Fifty Dollars (\$3,950.00). 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.

6. 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
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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.

7. 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.

8. 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.

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 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.

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. The undersigned representative of the Respondent certifies that he or she is a Commissioner of the Respondent and thus authorized to execute this CAO and to legally bind the Respondent to its terms and conditions. Execution of this CAO by an individual other than a Commissioner 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 23 DAY OF October, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Westwood Village Sewer Facilities Board

BY: [Signature]
(Signature)

Kevin Stutzman
(Typed or printed name)

TITLE: Treasurer

DATE: 10-10-17