

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Tim Casper, Individual
d/b/a Grove Mobile Home Park
1096 Interstate 55
Marion, AR 72364

LIS No. 15- 128
Permit No. ARU500020
AFIN 18-00935

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 Tim Casper, Individual, d/b/a Grove Mobile Home Park (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 (Facility) located in Marion, Crittenden County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.
5. 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]
6. Ark. Code Ann. § 8-4-217(b)(1)(E) provides:
 - (b) (1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the Department:
...
(E) To discharge sewage, industrial waste, or other wastes into any of the waters of this state.
7. Ark. Code Ann. § 8-4-103 authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000.00) 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. On May 28, 2015, the Department conducted a complaint investigation of the facility. The investigation revealed the facility was discharging wastewater to an unnamed ditch without having first obtained an NPDES permit from the Department. The act of discharging wastewater to the waters of the State without a written permit issued by the Department violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
10. On November 2, 2015, ADEQ issued a Notice of Violation (NOV), LIS No. 15-128, to Respondent for the violations noted.
11. On November 25, 2015, Respondent filed a Request for Commission Review and Adjudicatory Hearing with the APC&EC, which was docketed in APC&EC Docket No. 15-006-NOV.
12. Without admitting or denying the truth or falsity of any of the above allegations or issues currently in dispute, ADEQ and Respondent wish to avoid the uncertainty of litigation and settle and resolve their differences by entering into this CAO.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, Respondent shall immediately cease the unpermitted discharge of wastewater. Respondent shall collect any domestic sewage wastewater generated at the site, and shall provide monthly transport and disposal receipts to ADEQ until final compliance as described below.

2. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to ADEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer registered in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance and detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 9. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date contained in the CAP. The approved CAP, milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00), payable in 3 installments as follows: the first payment of Eight Hundred Fifty Dollars (\$850.00) is due within thirty (30) calendar days of the effective date of this Order; the second payment of Eight Hundred Fifty Dollars (\$850.00) is due within thirty (60) calendar days of the effective date of this Order; and the third payment of Eight Hundred Dollars (\$800.00) is due within thirty (90) 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 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.

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, for a period of sixty (60) days following the end of the 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. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this CAO and to legally bind that party to its terms and conditions.

SO ORDERED THIS 25th DAY OF April, 2016.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

BY: Timothy Casper
(Signature)

TIMOTHY CASPER
(Typed or printed name)

TITLE: OWNER

DATE: 4-13-16