

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CLP Magic Spring TRS Corp.
d/b/a Magic Springs & Crystal Falls
1701 East Grand Avenue
Hot Springs, AR 71901

LIS No. 16- 054
Permit No. AR0049115
AFIN 26-00377

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 Act), the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the regulations issued thereunder by the Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of CLP Magic Spring TRS Corp. d/b/a Magic Springs & Crystal Falls (Respondent) and the Arkansas Department of Environmental Quality (ADEQ 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 an amusement park (facility) located at 1701 East Grand Avenue, Hot Springs, Garland County, Arkansas.
2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

3. Respondent discharges stormwater runoff, pool filter backflow, and pool water from a treatment system consisting of a sedimentation pond with variable discharge to an unnamed tributary of Middle Branch of Gulpha Creek, thence to Middle Branch of Gulpha Creek, thence to Lake Catherine in Segment 2F of the Ouachita River Basin.

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 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 Arkansas Pollution Control and Ecology Commission under this chapter or of a permit issued under this chapter by the Arkansas Department of Environmental Quality.

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 AR0049115 (Permit) was transferred to the Respondent on September 10, 2013. The modified Permit became effective on September 13, 2013, and expires on February 29, 2016. Respondent submitted an application for renewal of the Permit to the Department on September 21, 2015.

Compliance Inspection

10. On May 14, 2015, the Department conducted a routine compliance inspection of the facility. The inspection revealed that the Respondent had been operating the facility without a licensed basic industrial wastewater operator as required by the Permit. This violated Part II, Condition 1 of the Permit and Ark. Code Ann. § 8-4-217(a)(3).

11. The ADEQ inspector also determined that Respondent failed to retain copies of discharge monitoring reports (DMRs) submitted in accordance with the Permit for at least three (3) years from the date they were submitted. This failure violates Part III, Section C, Condition 7 of the Permit and Ark. Code Ann. § 8-4-217(a)(3).

12. On June 8, 2015, the Department notified Respondent of the results of the inspection. On June 17, 2015; July 11, 2015; and August 8, 2015, the Department received the Respondent's responses to the violations cited in the inspection report. On September 1, 2015, the Department sent a letter to Respondent stating that Respondent had sufficiently addressed the violations cited in the inspection report.

13. Additional review by the Department revealed that the operator of the facility failed to obtain the required basic industrial wastewater operator license, due to registering for the wrong wastewater licensing class. As a result of this failure, the facility has continued to operate without a licensed basic industrial wastewater operator after the inspection responses were submitted to the Department.

Effluent Violations

14. On March 9, 2015, the Department sent a letter requesting a Corrective Action Plan (CAP) to address effluent violations reported by Respondent on DMRs submitted in accordance with the Permit. The deadline for submission of the CAP was March 23, 2015. Respondent failed to respond to the notice.

15. A subsequent review of DMRs revealed violations of the permitted effluent discharge limits in Part I Section A of the Permit. Respondent has reported fourteen (14) violations of the permitted effluent limits of two (2) pollutants from September 13, 2013, through April 30, 2016. Respondent reported:

- a) one (1) violation of the effluent discharge limit for Chemical Oxygen Demand;
- b) thirteen (13) violations of the effluent discharge limit for Total Residual Chlorine.

16. Each of these fourteen (14) discharge limitation violations constitutes a separate permit violation; and, therefore, fourteen (14) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

Application for Permit Renewal

17. On March 2, 2015 and June 1, 2015, the Department sent Respondent written notifications regarding the approaching expiration of the Permit on February 29, 2016. The letters notified Respondent of the requirement to submit a complete application for Permit renewal by no later than September 2, 2015.

18. On September 21, 2015, Respondent submitted a complete application for Permit renewal. Respondent therefore failed to submit a complete application for Permit renewal not less than one hundred eighty (180) days prior to the expiration date of the Permit. This failure violated 40 CFR Part 122.21(d).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately hire or bring into its employ an operator who is licensed as a basic industrial wastewater operator by the State of Arkansas, in

accordance with APC&EC Reg. 3, who shall be responsible for the overall operation of the facility.

2. A copy of the operator's license shall be furnished to the Department on or before the effective date of this Order.

3. Respondent shall immediately acquire and retain on-site copies of all records and reports as required by Part III, Section C, Condition 7 of the Permit. Certification that the aforementioned documentation is on-site and will be kept on-site shall be submitted to the Department within thirty (30) days of the effective date of this Order.

4. If the new Permit has not been issued by the expiration date of the existing Permit, the Respondent shall comply with the expired Permit until issuance of the new Permit.

5. Respondent shall immediately comply with all permitted effluent limits, unless a CAP is submitted as provided in Paragraph 6 of this Order and approved by ADEQ, in which case, Respondent shall comply with all permitted effluent limits no later than July 31, 2017.

6. If unable to immediately comply with all permitted effluent limits, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, for review and approval a comprehensive 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 no later than July 31, 2017, and the CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 15 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms,

milestone schedule and final compliance July 31, 2017 contained in the CAP and the approved CAP, milestone schedule and final compliance July 31, 2017 shall be fully enforceable as terms of this Order.

7. Respondent shall submit quarterly progress reports that detail the work completed from the approved CAP until the project is completed. The first progress report shall be due within three (3) months of the effective date of this Order.

8. On or before August 31, 2017, Respondent shall submit a report, through a P.E., certifying that compliance with the permitted effluent limits has been achieved.

9. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Dollars (\$7,000.00), or one-half of the full civil penalty of Three Thousand Five Hundred Dollars (\$3,500.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, prior to July 1, 2016. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation 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 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.

15. 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.

16. 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 5th DAY OF July, 2016.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

CLP MAGIC SPRING TRS CORP. d/b/a MAGIC SPRINGS & CRYSTAL FALLS

BY: Steve Honeycutt
(Signature)

Steve Honeycutt
(Typed or printed name)

TITLE: General manager

DATE: 6/30/2016