

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**

NOTICE OF VIOLATION

**TO: Tim Casper
1096 Interstate 55
Marion, AR 72364**

NOTICE is hereby given that the Director of the Arkansas Department of Environmental Quality (hereinafter "ADEQ" or "Department") has determined that there are reasonable grounds to believe that Tim Casper, Individual, d/b/a Grove Mobile Home Park (hereinafter "Respondent"), has committed the following violations of the Arkansas Water and Air Pollution Control Act (hereinafter "the Act"), Ark. Code Ann. § 8-4-101 et seq., and the regulations promulgated thereunder including, but not limited to, Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") Regulation No. 6: Regulations for State Administration of the National Pollutant Discharge Elimination System.

This Notice of Violation (hereinafter "NOV") is issued in accordance with the provisions of APC&EC Regulation 7: Civil Penalties and APC&EC Regulation 8: Administrative Procedures.

Grove Mobile Home Park NOV

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ALLEGATIONS AND PROPOSED FINDINGS OF FACT

1. Respondent operates a wastewater treatment facility (hereinafter "facility") located in Marion, Crittenden County, Arkansas.

2. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (hereinafter "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).

PROPOSED CIVIL PENALTY ASSESSMENT AND ORDER

1. Respondent shall immediately cease the unpermitted discharge of wastewater until such time that a permit to discharge has been obtained from ADEQ.

2. For the violations specified in the Allegations and Proposed Findings of Fact, Paragraph 9, Respondent is assessed a civil penalty of Eight Thousand Dollars (\$8,000.00) as provided by Ark. Code Ann. § 8-4-103 and APC&EC Regulation 7.

3. The total sum of civil penalties assessed to Respondent is Eight Thousand Dollars (\$8,000.00). Payment shall be due within thirty (30) calendar days of the effective date of the final Order in this matter, 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, Arkansas 72118-5317

Nothing contained in this NOV shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this NOV exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall this NOV be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

THEREFORE TAKE NOTICE THAT:

If Respondent wishes to dispute the Allegations and Proposed Findings of Fact or the Proposed Civil Penalty Assessment, Respondent must file a written request for hearing to this NOV that meets the requirements of APC&EC Regulation No. 8 with the Secretary, Arkansas Pollution Control and Ecology Commission, 101 East Capitol, Suite 205, Little Rock, Arkansas 72201, within Twenty (20) calendar days of the date of its receipt, or the allegations contained herein will be deemed proven. Upon filing a written request for hearing in compliance with APC&EC Regulation No. 8 with the Secretary of the APC&EC within the time provided, Respondent will be entitled to an adjudicatory hearing upon the allegations and matters stated in this NOV.

If no timely request for hearing that is compliant with APC&EC Regulation No. 8 is filed with the secretary of the APC&EC, the Director may issue a Default Administrative Order affirming the allegations as Findings of Fact, ordering the

proposed corrective action, and assessing the proposed civil penalties.

Becky W. Keogh

**BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY**

DATE: 11/2/2015

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF:

**TIM CASPER, Individual
d/b/a Grove Mobile Home Park
Marion, Arkansas**

AFIN 18-00935

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APC&EC Docket No.:

**LIS 15-128
Permit No. ARU500020**

**REQUEST FOR COMMISSION REVIEW AND
ADJUDICATORY HEARING**

Comes now Tim Casper, an individual and d/b/a Grove Mobil Home Park, ("Casper"), by and through its counsel, Albert J Thomas III, of Thomas Law Firm and files his Request for Commission Review and Adjudicatory Hearing ("Request") regarding an Notice of Violation, ("NOV"), issued by the Arkansas Department of Environmental Quality, ("ADEQ"), on November 2, 2015, pursuant to Arkansas Pollution Control & Ecology Commission ("APC&EC") Regulation 8.603 and 8.605, and would show as follows:

Introduction

1. Casper is forced to file this Request pursuant to APC&EC Regulation 8.402 (B)(5) and 8.603(B)(5).
2. ADEQ issued a NOV to Casper on November 2, 2015. At time of this filing, Casper is unaware of the APC&EC Docket number. A copy of the NOV is attached to hereto as Exhibit A.
3. ADEQ is required to publish notice of the NOV in a newspaper of general circulation, pursuant to APC&EC Regulation 8.405. Neither Casper, nor his undersigned counsel, has received proof of any required publication.

4. ADEQ mailed a copy of the NOV and attempted service in accordance with APC&EC Regulation No. 8 and Arkansas Rules of Civil Procedure 4(d)(8).

**RESPONSE TO NOTICE OF VIOLATION UNDER THE HEADING
ALLEGATIONS AND PROPOSED FINDINGS OF FACT**

5. Casper admits he purchased a mobile home park that was issued a permit to treat wastewater and denies the remaining allegations contained in Paragraph 1 of the NOV.

6. Casper denies the allegations set forth in Paragraph 2 of the NOV.

7. Paragraphs 3-8 of the NOV contain only statements of law and do not require a response; therefore, Casper denies the allegations, if any, contained in Paragraphs 3-8 of the NOV.

8. Casper admits that an investigation was conducted and denies the remaining allegations of Paragraph 9 of the NOV.

**RESPONSE TO NOTICE OF VIOLATION UNDER THE HEADING PROPOSED
CIVIL PENALTY ASSESSMENT AND ORDER**

9. Casper denies the allegations contained in Paragraph 1 of the NOV.

10. Casper denies the allegations contained in Paragraph 2 of the NOV.

11. Casper denies the allegations contained in Paragraph 3 of the NOV.

12. Casper denies the allegations contained in the "Therefore Take Notice That" paragraph beginning on page 4 of the NOV.

13. Casper denies any allegation in the NOV not specifically admitted herein.

14. ADEQ's NOV should be dismissed for failure to allege facts sufficient to support service of a NOV and a penalty assessment, insufficient service of process, insufficient process, and lack of jurisdiction over the person.

15. Casper affirmatively contests the proposed civil penalties.

16. Pleading affirmatively, under APC&EC Regulation No. 8, or Ark. R. Civ. P. 4, Casper raises as defenses laches, estoppel, statute of limitations, unconscionability and waiver.

17. Pleading affirmatively, the ADEQ fails to provide sufficient information to respond the proposed civil penalty and should be required to prove such allegation by strict proof. Therefore, Casper states that the proposed civil penalty fails to state a claim without more allegations, and, in the alternative, violates state and federal constitutional due process and equal protection rights.

18. Pleading affirmatively, Casper states that a prior permit was issued by the ADEQ or its predecessor.

19. Pleading affirmatively, Casper states the actions of ADEQ violate state and federal constitutional protections for due process rights.

20. Casper demands that ADEQ be held to a standard of strict proof for all allegations set forth in the NOV.

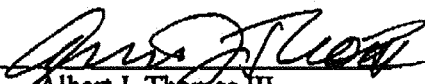
21. Casper reserves the right to plead further, pending discovery in this matter.

22. Casper agrees to a waiver of the one hundred twenty (120) day requirement set forth in Ark. Code Ann. § 8-4-205(c), if applicable, and APC&EC Regulation 8.614(A), to allow the parties hereto sufficient time to conduct discovery and to resolve their issues, if possible.

WHEREFORE, Tim Casper prays for dismissal of the this matter, or alternatively that the proposed penalty be eliminated, that the ADEQ takes nothing thereby, for all attorney's fees and costs expended by Tim Casper and for all other further relief to which he is entitled.

Respectfully submitted,

Albert J. Thomas III
Thomas Law Firm
P.O. Box 1616
Heber Springs, Arkansas 72543-1616
Phone: (501) 362-6600
Email: athomas@thomas-law-firm.com

By: 
Albert J. Thomas III
AR Bar No. 95160

CERTIFICATE OF SERVICE

I, Albert J. Thomas III, do hereby certify that I have mailed a true and correct copy of the above and foregoing document by mailing, postage prepaid, this 23rd day of November 2015, to the following:

Via Certified Mail – Return Receipt #7012 2210 002 0356 7730
Director Becky Keogh
c/o Loriele Gutting, Chief Legal Division
ADEQ Legal Division
5301 Northshore Drive
North Little Rock, AR 72118-5317


Albert J. Thomas III