

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF VALLEY VIEW)
GOLF, LLC)**

DOCKET NO: 16-003-NOV

AMENDED NOTICE OF VIOLATION

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through its attorney Tracy R. Rothermel, and in support of its Amended Notice of Violation (NOV) states:

1. The initial Notice of Violation was filed by ADEQ on July 20, 2016. Respondent filed its Response and Request for Hearing on September 5, 2016. Since that time, additional violations have occurred. The initial NOV is hereby incorporated as if restated word for word.
2. On July 18, 2016, a complaint was filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. (Exhibit 5)
3. On July 25, 2016, a complaint was filed by an individual stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. (Exhibit 6)
4. On August 2, 2016, a complaint was filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. (Exhibit 7)
5. On August 5, 2016, a complaint was filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf course. This is in continued violation of Ark.

Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21.
(Exhibit 8)

6. On August 9, 2016, a complaint was filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21.
(Exhibit 9)

7. On August 11, 2016, a complaint was filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21.
(Exhibit 10)

8. On August 19, 2016, a complaint was filed by an individual stating that the Respondent was irrigating the golf course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. (Exhibit 11)

9. On August 31, 2016, ADEQ inspectors conducted an inspection of the Washington County POID #5 wastewater treatment facility. Inspectors observed the Respondent irrigating the putting greens near the golf course ponds. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. During this inspection, ADEQ inspectors collected samples of the effluent water in the golf course ponds. These samples were then analyzed for Biochemical Oxygen Demand (BOD), Ammonia-Nitrogen (NH₃-N), Fecal Coliform Bacteria (FCB), and *Escherichia coli* (E.coli). The results are listed in Table 1 of the attached exhibit. (Exhibit 12)

10. On September 22, September 28, October 3, and October 4, 2016, complaints were filed by a resident that lives near the golf course, stating that the Respondent was irrigating the golf

course. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E), Ark. Code Ann. § 8-4-101 *et seq.*, and 40 C.F.R. §122.21. (Exhibit 13)

12. The civil penalty specified in the initial Notice of Violation remains unchanged at this time.

Wherefore, ADEQ requests that its Notice of Violation and Amended Notice of Violation be upheld, its requests for relief and remediation be granted, and for all other relief to which it may be entitled.

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on November 8, 2016, I did serve a copy of the above on the following individuals via email and U.S. Mail, first class, postage prepaid:

John F. Peiserich
john@ppgmrlaw.com
Kimberly D. Logue
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PPGMR Law, PLLC
101 Morgan Keegan Drive, Suite A
Little Rock, Arkansas 72202

And

Patricia Goff – Commission Secretary
Arkansas Pollution Control and Ecology Commission
101 East Capitol, Suite 205
Little Rock, AR 72201



Tracy R. Rothermel

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF
VALLEY VIEW GOLF, LLC
11520 CLUBHOUSE PARKWAY
FARMINGTON, AR 72730

AFIN NO. 72-00610

DOCKET NO. 16-003-NOV

RESPONSE TO AMENDED NOTICE OF VIOLATION AND REQUEST FOR HEARING

Valley View Golf, LLC ("VVG"), by and through its undersigned counsel, hereby responds to the Amended Notice of Violation ("NOV") received from the Arkansas Department of Environmental Quality ("ADEQ") alleging violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, Arkansas Water and Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, and the regulations promulgated thereunder and requests a hearing before the Arkansas Pollution Control and Ecology Commission ("APC&EC") and in support thereof states as follows:

1. This Response to Amended Notice of Violation (hereinafter "Response") is brought pursuant to Ark. Code Ann. § 8-4-205, APC&EC Regulation No. 8, the substantive provisions of the Clean Water Act, the Arkansas Water and Air Pollution Control Act, and state and federal regulations adopted pursuant to these laws.

2. The date of the Director's final decision is unknown, as the Director does not appear to be a signatory to the Amended Notice of Violation. The requirements found in APC&EC Regulation No. 8.402 have not been met with regard to the Amended Notice of Violation. The response date for the NOV is unknown because there does not appear to be a Director's final decision.

3. VVG responds to the Amended Notice of Violation as follows:

a. The dates recited by ADEQ are admitted. The remainder of Paragraph 1 is denied.

VVG hereby incorporates its Response and Request for Hearing as if restated word for word.

b. VVG has insufficient information to either admit or deny the information contained in Paragraphs 2 through 8, therefore Paragraphs 2 through 8 are denied. VVG specifically denies the allegation that irrigation constitutes any type of violation.

c. VVG has insufficient information to either admit or deny the information contained in Paragraph 9, therefore Paragraph 9 is denied. VVG specifically denies the allegation that irrigation constitutes any type of violation.

d. VVG has insufficient information to either admit or deny the information contained in Paragraph 10, therefore Paragraph 10 is denied. VVG specifically denies the allegation that irrigation constitutes any type of violation.

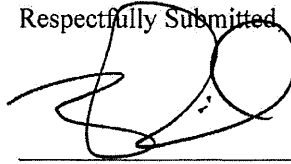
e. Numbered Paragraph 12 [*Paragraph 11*] is denied.

f. The Wherefore statement is denied.

4. Pleading affirmatively, VVG states that it is not a permitted entity, there is no evidence that it exceeded any water quality requirements imposed by law, the requirements that ADEQ is attempting to impose are not law but are arbitrary and capricious, and ADEQ is attempting to impermissibly punish VVG without cause constituting an extrajudicial act. The civil penalties sought to be imposed by ADEQ are excessive and unwarranted, and are not based upon the requirements of APC&EC Regulation No. 7 but are instead subjective determinations unsupported by the facts. Additionally, ADEQ chose to pursue formal enforcement as a means of harassment, refusing to meet with VVG despite repeated requests for meetings made by VVG to ADEQ and instead of entering into informal negotiations. Further, ADEQ is basing these pleadings on the statements of nonparties without sufficient investigation to determine the veracity of the complaints.

WHEREFORE, Valley View Golf, LLC respectfully requests that the original Notice of Violation and Amended Notice of Violation be dismissed, or alternatively that the Proposed Civil Penalty Assessment and Order be denied, that ADEQ take nothing thereby, and for all other equitable and just relief to which VVG is entitled.

Respectfully Submitted,



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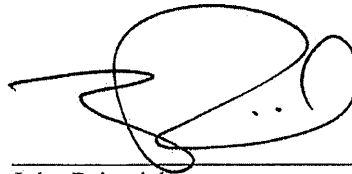
CERTIFICATE OF SERVICE

The undersigned does hereby certify that on November 23, 2016, I did serve a copy of the above Response to Amended Notice of Violation and Request for Hearing on the following individuals by e-mail:

Tracy Rothermel
Attorney, ADEQ
5301 Northshore Drive
North Little Rock, AR 72118

And

Patricia Goff – Commission Secretary
Arkansas Pollution Control and Ecology Commission
101 East Capitol, Suite 205
Little Rock, AR 72201

A handwritten signature in black ink, appearing to read 'John Peiserich', is written over a horizontal line. The signature is stylized and somewhat cursive.

John Peiserich