

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Valley View Golf, LLC
11520 Clubhouse Parkway
Farmington, AR 72730

LIS No. 16- 058
Permit No. Unpermitted
AFIN 72-00610

NOTICE OF VIOLATION

**TO: Mr. Joseph E. Stewart – Registered Agent
11520 Clubhouse Parkway
Farmington, AR 72730**

NOTICE is hereby given that the Director of the Arkansas Department of Environmental Quality (ADEQ or Department) has determined that there are reasonable grounds to believe that Valley View Golf, LLC (Respondent) has committed the following violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.* (Clean Water Act), Arkansas Water and Air Pollution Control Act (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 (APC&EC) Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas.

This Notice of Violation (NOV) is issued in accordance with the provisions of the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7: Civil Penalties and APC&EC Regulation 8: Administrative Procedures.

ALLEGATIONS AND PROPOSED FINDINGS OF FACT

1. Respondent operates Valley View Golf Course (golf course), a golf course located at 11520 Clubhouse Parkway, Farmington, Washington County, Arkansas 72730.

2. The Washington County Property Owner's Improvement District #5 (POID) operates a wastewater treatment facility that stores effluent in two storage ponds located on the golf course. The waste consists of domestic wastewater produced from a housing subdivision. The treatment process consist of a comminutor chamber, one deep aerated treatment cell, pressure filters, UV disinfection, the effluent storage ponds (storage ponds), and an irrigation system for the golf course. Treated effluent is stored in the two storage ponds before it is applied by a sprinkler system to irrigate the golf course. This system was previously permitted, but the permit expired January 31, 2016.

3. On March 14, and 16, 2016, an inspection of the POID was conducted. During the inspection the storage ponds, irrigation pump house, and irrigation control boxes were observed. Many of the observed systems were not operational including the UV disinfection system. At the time of the inspection, waste solids were observed in and around the west storage pond. In addition, the west storage pond was overflowing at its south side into a golf course drain. The golf course drains, located throughout the golf course, flow into the City of Farmington's Municipal Storm Sewer System. The overflow water from that storage pond was observed flowing from the golf course drain three into the City of Farmington's Municipal Separate Storm Sewer System. The storage pond overflow water then entered the City of Farmington's Storm Drain two, and then flowed to Storm Drain three, Storm Drain four, and Storm Drain five. The City of Farmington

has a Municipal Separate Storm Sewer System (MS4) permit that allows stormwater to collect and flow to an unnamed tributary, then to the Illinois River. During the inspection, an employee of the golf course informed ADEQ inspectors that the Respondent irrigates daily with effluent wastewater taken from the storage ponds. (Exhibit # 1, page 34, for map of storm drains.)

4. Respondent is not permitted by ADEQ for the land application of effluent from the storage ponds located on the golf course. (Exhibit 2 for flowchart of collection system and storage ponds one and two).

5. The golf course is subject to regulation pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, which would authorize the storage and land application of treated effluent pursuant to either a No Discharge Water Permit or a National Pollutant Discharge Elimination System Permit (NPDES).

6. Ark. Code Ann. § 8-4-217(a)(2), (3) provides:
(a) It shall be unlawful for any person to:

- ...
- (2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;
- (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 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. Ark. Code Ann. § 8-4-217(b)(1)(C),(E), provides in pertinent part:

(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:

...

(C) To construct, install, or operate any building, plant, works, establishment, or facility or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of this state or would otherwise alter the physical, chemical or biological properties of any waters of this state in any manner not already lawfully authorized;

(E) To discharge sewage, industrial wastes, or other wastes into any of the waters of this state.

10. On June 16, 2016, ADEQ informed the Respondent of the issues regarding the unpermitted land application of effluent, and stated that the contents of the storage ponds are considered effluent until proof has been submitted to ADEQ the storage ponds have been fully remediated of all wastewater and solids and has been disconnected from the POID's wastewater treatment system. ADEQ further informed Respondent that any land application without a permit, prior to the submission of the proof of remediation, would be considered a violation and subject to the civil penalty of up to \$10,000 per day per occurrence. (Exhibit 3)

11. On June 21, 2016, an employee of the POID filed a report with ADEQ stating there was an unpermitted discharge situation occurring with the storage ponds in conjunction with land application of the water. The storage ponds' water consists of effluent that was discharged into the storage ponds from the POID's UV treatment process and the aeration pond's untreated effluent. The report revealed the following violations:

- a. On June 11 through June 21, 2016, water from the storage ponds was land applied through the sprinkler system, onto the golf course. This action violated Ark. Code Ann. § 8-4-101 *et seq.* which governs the storage and land application of treated effluent. Respondent does not

have a land application permit nor has Respondent applied for this type of permit through ADEQ. (Exhibit 4A)

- b. On June 20 and 21, 2016, there was a report of an unknown amount of water per day being transferred from the storage ponds and used to water the golf course. This action of the unpermitted land application of effluent from the storage ponds violated Ark. Code Ann. § 8-4-217(b)(1)(C),(E), and 40 C.F.R. §122.21. (Exhibit 4A)

12. On June 22, 2016, ADEQ notified the Respondent to cease the unpermitted land application of effluent from the storage ponds onto the golf course. ADEQ gave a compliance date of Friday, June 24, 2016, to cease the unpermitted land application of effluent, or risk the issuance of a Notice of Violation. (Exhibit 4B)

13. On the morning of June 23, 2016 at 8:56 a.m., a complaint was filed with ADEQ, reporting that the Respondent was irrigating the golf course. The complaint was received from a residence located near the golf course. Pictures of this act were provided with the complaint. This is in violation of Ark Code Ann. § 8-4-101 *et seq.* which governs the storage and land application of treated effluent. This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E) and 40 C.F.R. §122.21. Respondent neither applied for nor received this type of permit through ADEQ. (Exhibit 4C)

14. On the morning of June 23, 2016 at 9:30 a.m., an additional complaint was filed with ADEQ, reporting that the Respondent was irrigating the golf course again. The complaint was received from a residence located near the golf course. Pictures of this act were provided to document this complaint. This is in continued violation of Ark. Code Ann. § 8-4-217(b)(1)(C),(E) and Ark. Code Ann. § 8-4-101 *et seq.* that governs

the storage and land application of treated effluent, as well as 40 C.F.R. §122.21. Respondent neither applied for nor received this type of permit through ADEQ. (Exhibit 4D)

15. On June 24, 2016, a wastewater system by-pass complaint was reported by the representatives of the POID wastewater treatment plant, stating that the unpermitted land application of effluent from the storage ponds has been ongoing since June 8, 2016, and the wastewater treatment plant has no control to eliminate this situation at this time. This is a 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 4E)

16. On June 24, 2016, at 1:56 p.m., a complaint was filed by a resident near the golf course that Respondent was irrigating the course again. 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. (Exhibits 4F)

17. On June 25, 2016, at 2:39 p.m., a complaint was filed by a resident near the golf course that the Respondent was "irrigating the course through the sprinkler system." 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 4G)

18. On June 27, 2016, a complaint was filed by a resident that lives near the golf course 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 4H)

19. On June 29, 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 4I)

PROPOSED CIVIL PENALTY ASSESSMENT AND ORDER

1. Respondent shall immediately cease all unpermitted land application of effluent until such time as they:

(a.) Submit to ADEQ, certification by a Professional Engineer (P.E.) registered with the State of Arkansas that the golf course drain system does not connect to the City of Farmington's Municipal Separate Storm Sewer System and therefore, does not discharge to the waters of the state, and

(b.) Submit and obtain approval from ADEQ for a No-Discharge permit, or

(c.) Submit the appropriate NPDES permit application and obtain approval from ADEQ.

2. Respondent is assessed a proposed civil penalty for each violation of the allegations and Proposed Findings of Fact as follows:

For violations specified in Paragraph's 10, 11 (a), (b) 12 - 19, Respondent shall pay a penalty in the amount of: Thirty Eight Thousand Dollars (\$38,000.00).

3. In determining the amount of civil penalties assessed, ADEQ considered pertinent factors pursuant to and consistent with Section 9 of APC&EC Regulation No. 7 and the ADEQ Uniform Penalty Policy. Therefore, pursuant to Ark. Code Ann § 8-4-103, the total sum of civil penalties assessed to the Respondent is Thirty Eight Thousand Dollars (\$38,000.00). 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

4. In the event that Respondent fails to pay the civil penalty within the prescribed time or fails to comply with any provision in the final order of this matter, ADEQ shall be entitled to attorney's fees and costs of collection.


5. Failure to meet any requirement or deadline in the final order of this matter constitutes a violation of the Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand additional penalties for future violations.

6. Nothing contained in the final order entered in this matter 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 that is not expressly addressed herein. Nothing contained herein or the final order entered in this matter shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall the final order entered in this matter 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 a hearing in accordance with APC&EC Regulation 8, with the Secretary of the Arkansas

Pollution Control and Ecology Commission, 101 East Capitol, Suite 205, Little Rock, Arkansas 72201 within **twenty (20) calendar days** of receipt of this Notice of Violation or these allegations will be deemed proven. Upon timely filing a written response that is compliant with APC&EC Regulation 8, Respondent will be entitled to an adjudicatory hearing upon the allegations, proposed civil penalties, and other matters stated in this Notice of Violation. If no timely request for a hearing is filed with the Secretary of the APC&EC, the Director may issue an Administrative Order confirming the allegations as Findings of Fact, assessing civil penalties, and ordering the corrective actions stated herein.


BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

DATE: July 19, 2016

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-_____

RESPONSE TO NOTICE OF VIOLATION AND REQUEST FOR HEARING

Valley View Golf, LLC (“VVG”), by and through its undersigned counsel, hereby responds to the 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 Notice of Violation and Request for Hearing (hereinafter “Response”) is brought pursuant to Ark. Code Ann. § 8-4-205, APCEC 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 was July 19, 2016. The response date for the NOV is August 9, 2016.

3. VVG responds to the Allegations and Proposed Findings of Fact as follows:

- a. Paragraph 1 is admitted.
- b. It is admitted that a prior permit existed covering part of VVG’s property, however the remainder of Paragraph 2 is denied.
- c. Paragraph 3 is denied as it applies to the Respondent.
- d. VVG admits that no permit currently exists for its property. However, at all times relevant to the issues, a permit was in place. The remaining allegations of Paragraph 4 are denied.

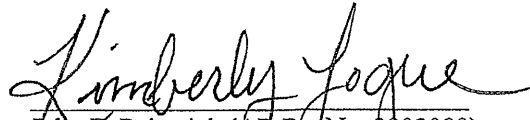
- e. Paragraph 5 is denied.
- f. Paragraph 6 through 9 are statements of law which require no response. To the extent a response is required, each Paragraph is denied.
- g. Paragraph 10 accurately reflects the communications from ADEQ, however there is no basis in law for the communications made by ADEQ. To the extent Paragraph 10 requires a response, it is denied.
- h. Paragraph 11 and all subparts thereof are denied.
- i. Paragraph 12 accurately reflects the communications from ADEQ. However, there is no basis in law for the communications made by ADEQ. To the extent Paragraph 12 requires a response, it is denied.
- j. Paragraph 13 through 19 are denied.

4. The statements in Paragraphs 1 through 6 of the Proposed Civil Penalty Assessment and Order in the NOV are not allegations of fact and therefore require no response.

5. 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.

WHEREFORE, Valley View Golf, LLC respectfully requests that the NOV 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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Telephone: (479) 464-9828

Facsimile: (479) 464-9768

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on August 5, 2016, I did serve a copy of the above and foregoing Request for Hearing on the following individuals by certified mail, return receipt requested:

Becky W. Keogh
Director, ADEQ
5301 Northshore Drive
North Little Rock, AR 72118

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


Kimberly D. Logue