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Land Application: Arkansas Department of Environmental Quality Notice of Violation to Washington County, Arkansas Golf Course

Arkansas Environmental, Energy, and Water Law Blog

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The Arkansas Department of Environmental Quality ("ADEQ") issued a July 19th Notice of Violation ("NOV") alleging Valley View Golf, LLC ("VVG") violated certain Arkansas statutory provisions related to waters of the State. See LIS No. 16-058.

The NOV states that VVG operates Valley View Golf Course ("golf course") which is located in Washington County, Arkansas.

The Washington County Property Owners' Improvement District #5 ("improvement district") is stated to operate a wastewater treatment facility that stores effluent in two storage ponds located on the golf course. The NOV further states that the waste consists of domestic wastewater produced from a housing subdivision and further describes the treatment process which includes an irrigation system for the golf course. Treated effluent is stated to be stored in the two storage ponds before it is applied by a sprinkler system to irrigate the golf course.

The NOV alleges that the system was previously permitted but the permit expired January 31, 2016.

An inspection of the improvement district facility was stated to have been conducted on March 14 and 16, 2016 and that certain systems were not operational. A storage pond is alleged to have been overflowing into a golf course drain flowing into the City of Farmington's Municipal Storm Sewer System. This overflow was alleged to move into the City of Farmington's storm drains and subsequently through the City's Municipal Separate Storm Sewer System ("MSSSS") allowing stormwater to collect and move into an unnamed tributary that flows to the Illinois River. An employee of the golf course is alleged to have informed the ADEQ inspectors that VVG irrigates daily with effluent wastewater taken from the storage ponds.

VVG is allegedly not permitted by the ADEQ for the land application of effluent from the storage ponds located on the golf course.

The NOV alleges that the golf course is subject to regulation pursuant to the Arkansas Water and Air Pollution Control Act 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 ("NPDES") Permit.

ADEQ is stated to have informed VVG of the issues regarding the alleged unpermitted land application of the effluent. The agency is alleged to have 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 disconnected from the improvement district's wastewater treatment system.

The NOV further alleges an unpermitted discharge occurring with the storage ponds in conjunction with land application of the water. Unpermitted irrigation of the golf course allegedly violates:

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

The NOV proposes a Civil Penalty Assessment and Order which would include:

- Immediate cessation of all unpermitted land application of effluent until such time as:
- 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
- Submit and obtain approval from ADEQ for a No-Discharge permit, or
- Submit the appropriate NPDES permit application and obtain approval from ADEQ
- Assessment of a civil penalty in the amount of \$38,000

VVG filed a document in response to the NOV styled "Response to the Notice of Violation and Request for Hearing" ("Response") on August 5th. VVG notes in paragraph five of the Response that pleading affirmatively:

. . .VVG states 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 extra judicial act. Civil penalties sought to be imposed by ADEQ are excessive and unwarranted, and are not based on the requirements of APC&EC Regulation No. 7 but are instead subjective determinations unsupported by the facts. Additionally, ADEQ chose to pursue formal enforcement action as a means of harassment, refusing to meet with VVG despite repeated requests for meetings made by VVG to ADEQ instead of entering into informal negotiations.

[A copy of the NOV \(without exhibits\) and VVG's Response can be downloaded here.](#)