

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Arkansas Department of Human Services
South Arkansas Youth Services
P.O. Box 487
Mansfield, AR 72944

LIS No. 20- 174
Permit No. AR0052515
AFIN 66-01766

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

The issues herein having been settled by the agreement of the Arkansas Department of Human Services - South Arkansas Youth Services (Respondent) and the Division of Environmental Quality¹ (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates a wastewater treatment system (“facility”) located at 36 Johnny Cake Road, Mansfield, Sebastian County, Arkansas.
2. The facility consists of an one (1) acre waste stabilization pond, dosing siphon, two (2) sand filters, and a chlorine contact chamber.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

3. Respondent discharges wastewater to unnamed tributary of Lake Number Two, thence into Lake Number Two, thence into Cherokee Creek, thence into Prairie Creek, thence into James Fork, thence into the Poteau River, thence into the Arkansas River in Segment 3I of the Arkansas River Basin..

4. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

5. 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).

6. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“Act”) to issue NPDES permits in the state of Arkansas and to initiate an enforcement action for any violation of an NPDES permit.

7. 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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

8. Ark Code Ann. § 8-4-217(b)(1)(C) 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 division:

(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;

9. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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.

10. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

11. On March 17, 2015, Respondent submitted an incomplete permit application

12. On April 2, 2015, DEQ notified Respondent that the application was reviewed and determined to be incomplete. DEQ provided a list of the items needed to complete the permit application.

13. Only April 8, 2015, Respondent submitted additional information.

14. On April 20, 2015, DEQ notified Respondent that the application was reviewed and determined to be incomplete. DEQ provided a list of the items needed to complete the permit application.

15. On June 4, 2015, DEQ notified Respondent the application for issuance of NPDES Permit AR0052512 had been placed in an inactive status for failure to satisfy the deficiencies in the permit application.

16. On September 18, 2019, DEQ conducted a Reconnaissance Inspection of the facility. The inspection revealed the following violations:

- a. Respondent was operating a treatment system without the required permit. This action is a violation of Ark. Code Ann. § 8-4-217 (b)(1)(C) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On October 8, 2019, DEQ notified Respondent of the inspection results and requested a response within thirty (30) days of receipt of the letter. To date, DEQ has not received a response to the violation cited in the inspection report.

18. On December 16, 2019, DEQ notified Respondent of the failure to respond to the inspection results and requested a response by January 3, 2020. DEQ did not receive a response by January 3, 2020.

19. On January 7, 2020, DEQ received an incomplete application.

20. On January 15, 2020, DEQ notified Respondent that the application was reviewed and determined to be incomplete. DEQ provided a list of the items needed to complete the permit application.

21. On January 21, 2020, February 5, 2020, February 7, 2020, and February 11, 2020, DEQ received additional information from Respondent.

22. On February 14, 2020, DEQ notified Respondent that the application was reviewed and determined to be administratively complete. The permit application was assigned NPDES Permit Number AR0063626 and State Construction Permit Number AR0052515C.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon execution of this Order, Respondent shall monitor the effluent discharge and comply with the following preliminary limits for discharge to tributary of Cherokee Creek until the effective date of the Permit issued to Respondent by DEQ:

Preliminary Limits for Discharge to tributary of Cherokee Creek				
Parameter	Monthly Average	Daily Maximum	Monitoring Requirements	
			Frequency	Sample Type
Flow	Report, MGD	Report, MGD (Daily Max)	five/week	instantaneous
Carbonaceous Biochemical Oxygen Demand (CBOD5)	20.0 mg/L	30.0 mg/L	two/month	grab
Total Suspended Solids (TSS)	20.0 mg/L	30.0 mg/L	two/month	grab
Ammonia-Nitrogen (NH3-N)				
(April)	5.6 mg/L	5.6 mg/L	two/month	grab
(May–October)	10.0 mg/L	15.0 mg/L	two/month	grab
(November–March)	16.7 mg/L	16.7 mg/L	two/month	grab
Dissolved Oxygen (DO)				
(May–October)	3.0 mg/L (Instantaneous Minimum)		two/month	grab
(November–April)	2.0 mg/L (Instantaneous Minimum)		two/month	grab
Fecal Coliform Bacteria (FCB)	1000 col/100 mL	2000 col/100 mL	two/month	grab
pH	6.0 – 9.0 s.u.		two/month	grab
Total Residual Chlorine (TRC)	Report		two/month	grab
Total Phosphorus (TP)	Report		two/month	grab

All parameters shall be measured using any approved test method established in 40 CFR § 136.

TRC must be measured using any approved test method established in 40 CFR § 136 capable of meeting a detection level of 0.033 mg/l or lower. If TRC is not detected at the required detection level (i.e., lab result is “ND”), report “0” on the Discharge Monitoring Report (DMR).

2. Upon execution of this Order, Respondent shall report the monthly monitoring results on a Discharge Monitoring Report (DMR) form provided by DEQ or other form/method approved in writing by DEQ until the effective date of the Permit issued to Respondent by DEQ. Each monitoring period shall begin on the first day of each month and end on the last day of each month. Monitoring results obtained during the previous monitoring period shall be summarized and reported on a DMR form postmarked no later than the 25th day of the month or submitted

electronically by 6:00 p.m. of the 25th, following the completed reporting period. DMRs must be submitted even when no discharge occurs during the reporting period. When mailing the DMRs, the signed and certified DMRs shall be submitted to the Director at the following address: Enforcement Branch, Office of Water Quality, Division of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118-5317.

3. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards the construction of the new wastewater treatment plant. Upon completion of the construction on the wastewater treatment plant, Respondent shall submit a final compliance report certifying that the facility, with proper operation and maintenance, will be in compliance with the discharge limitations and conditions set forth in the Permit. The final compliance report shall also include a copy of the Notice of Completion of Construction for State Construction Permits.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Two Hundred Dollars (\$7200.00), of which Seven Thousand Two Hundred Dollars (\$7200.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Seven Thousand Two Hundred Dollars (\$7,200.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Seven Thousand Two Hundred Dollars (\$7,200.00) shall be payable immediately to DEQ on demand. Payment is due within thirty (30) calendar days of the effective date of this Order. Such payments shall be made payable to the Division of Environmental Quality, and mailed to:

DEQ, Fiscal Division
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

5. 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, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

First day through fourteenth day:	\$100.00 per day
Fifteenth day through the thirtieth day:	\$500.00 per day
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 that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

6. If any event, including but not limited to an act of nature, occurs that 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 DEQ, 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.

7. DEQ may grant an extension of any provision of this Order if Respondent requests such an extension in writing, and 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. Respondent has the burden of proving that any delay is caused by circumstances beyond the control and without the fault of Respondent, as well as the length of the delay attributable to such circumstances. Failure to notify DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

8. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

9. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ 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 25th day of the month following the date this Order is executed. As provided by APC&EC Regulation No. 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.

10. Nothing in this Order shall be construed as a waiver by DEQ 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

11. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 28 DAY OF September, 2020.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Arkansas Department of Human Services – South Arkansas Youth Services

BY: Craig A. Parsons
(Signature)

Craig A. Parsons
(Typed or printed name)

TITLE: DHS Facilities Administrator, Office of Procurement

DATE: 24 September 2020