

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Cane Creek State Park  
State Parks Division  
Arkansas Department of Parks, Heritage, and Tourism  
One Capitol Mall  
Little Rock, AR 72201

LIS No. 21-019  
Permit No. AR0045888  
AFIN 40-00038

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the State Parks Division of the Arkansas Department of Parks, Heritage, and Tourism and the Division of Environmental Quality<sup>1</sup> (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 50 State Park Road, Star City, Lincoln County, Arkansas.
2. Respondent discharges treated wastewater to Cane Creek Lake, thence to Bayou Bartholomew in Segment 2B of the Ouachita River Basin.

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<sup>1</sup> 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 is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).
4. 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).
5. 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.
6. 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].
7. 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 rule or permit issued pursuant to the Act.
8. 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.”
9. DEQ issued NPDES Permit Number AR0045888 (“Permit”) to Respondent on February 27, 2017. The Permit became effective on August 1, 2017 and expires on July 31, 2022.
10. On July 29, 2019, DEQ conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

11. The review revealed that Respondent reported the following violations of the permitted effluent discharge limitations detailed in Part I, Section A of the Permit from August 1, 2016 through June 30, 2019:

- a. Six (6) violations of Dissolved Oxygen;
- b. Twelve (12) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Twenty (20) violations of Total Suspended Solids;
- d. Thirty-three (33) violations of Ammonia Nitrogen; and
- e. Two (2) violations of Fecal Coliform Bacteria.

12. Each of the seventy-three (73) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of seventy-three (73) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On July 29, 2019, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) detailing the corrective actions to be taken to achieve compliance with the effluent limitations of the Permit. The CAP was to contain a milestone schedule, a final compliance date, and a certification by a Professional Engineer (P.E.) and be submitted to DEQ by September 30, 2019.

14. On October 16, 2019, Respondent submitted a request to extend the submission date of the requested CAP to October 31, 2019. DEQ approved this request.

15. On October 31, 2019, Respondent submitted a CAP with a final compliance date of October 1, 2020.

16. On April 13, 2020, Respondent submitted a CAP Progress Report detailing the activities conducted between November 2019 and March 2020 to address the Permit violations.

17. On July 15, 2020, Respondent submitted a CAP Progress Report detailing the activities conducted during April, May, and June 2020 to address the Permit violations.
18. On October 9, 2020, Respondent submitted and DEQ subsequently approved a request to extend the submission date of the final compliance report to October 16, 2020.
19. On October 16, 2020, Respondent notified DEQ that the facility had several effluent limitation violations during the September 2020 monitoring period. Respondent requested a five (5) day extension for submitting the final compliance report to DEQ. DEQ approved the extension of the final compliance report to October 23, 2020.
20. On October 23, 2020, Respondent submitted a CAP Progress Report stating that compliance with the terms of the Permit had not been achieved. The report further detailed additional corrective actions necessary to achieve compliance, a revised milestone schedule, and revised final compliance date of October 15, 2021.
21. On October 23, 2020, DEQ conducted a follow-up review of the, certified DMRs submitted by Respondent in accordance with the Permit.
22. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit, for the monitoring periods beginning July 1, 2019 and ending September 30, 2020:
  - a. Four (4) violations of Dissolved Oxygen;
  - b. Seven (7) violations of Carbonaceous Biochemical Oxygen Demand;
  - c. Thirteen (13) violations of Total Suspended Solids;
  - d. Eleven (11) violations of Ammonia Nitrogen; and
  - e. Fifteen (15) violations of Fecal Coliform Bacteria.

23. Each of the fifty (50) discharge limitation violations listed in Paragraph 22 above constitutes a separate permit violation for a total of fifty (50) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

24. On October 27, 2020, DEQ approved, with stipulations, the revised milestone schedule and revised final compliance date of October 15, 2021 submitted by Respondent on October 23, 2020.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall implement the revised Corrective Action Plan (CAP), in accordance with the revised milestone schedule contained in the CAP Progress Report submitted to DEQ on October 23, 2020. Due to extreme fluctuations in flow rates associated with seasonal visitor usage at Cane Creek State Park, Respondent shall monitor and evaluate the effectiveness of its CAP and make modifications thereto, if needed, within such additional time to ensure final compliance on or before June 30, 2022. The approved CAP, milestone schedule, and final compliance date of June 30, 2022, shall be fully enforceable as terms of this Order.
2. Within ninety (90) calendar days of the effective date of this order, Respondent shall complete and submit to DEQ, for review and approval, an evaluation of the sanitary sewer collection system and submit a Sanitary Sewer Remediation Plan (SSRP) detailing the findings, identifying sources of inflow and infiltration to the system, outlining the necessary corrective actions, establishing a milestone schedule, and setting the final compliance date for completing these actions.
3. On or before the first (1st) 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 compliance with the final permitted effluent limits set forth in Part I, Section A of the Permit. On or before June 30, 2022, Respondent shall submit a final compliance report stamped by a Professional Engineer licensed in the state of Arkansas certifying that all milestones contained in the CAP have been completed, and the facility is in compliance with the effluent limitations set forth in Part 1, Section A of the Permit.

4. In compromise and full settlement of the violations specified in the Findings of Fact, and to the extent permitted by law, Respondent agrees to pay a civil penalty of Six Thousand Dollars (\$6000.00), of which Six Thousand Dollars (\$6000.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Six Thousand Dollars (\$6000.00) 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 Six Thousand Dollars (\$6000.00) shall be payable immediately to DEQ. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

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 to the extent permitted by law.

5. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, and to the extent permitted by law, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. 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 Rule 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 (30) 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 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 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 or a waiver by Respondent of any rights to which entitled as an agency of the State of Arkansas. 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 24th DAY OF February, 2021.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

State Parks Division,  
Arkansas Department of Parks, Heritage, and Tourism

BY: [Signature]  
(Signature)

GRADY B. SPANN  
(Typed or printed name)

TITLE: Director, ARKANSAS STATE PARKS

DATE: 2-10-21