

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Mountain Top Suburban Improvement District  
No. 66 of Garland County, Arkansas  
d/b/a Village Square Shopping Center  
PO Box 8511  
Hot Springs Village, AR 71910

LIS No. 21- 034  
Permit No. AR0045047  
AFIN 26-00237

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 Mountain Top Suburban Improvement District No. 66 of Garland County, Arkansas d/b/a Village Square Shopping Center (Respondent) 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 non-municipal domestic sewage treatment works (“facility”) located at 4701 Hwy. 7 North, Hot Springs, Garland County, Arkansas.

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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.

2. Respondent discharges treated wastewater to an unnamed tributary of Mill Creek, thence to Mill Creek, thence to the Saline River, thence to the Ouachita River in Segment 2C of the Ouachita River Basin.

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)(1) and (3) provide:

(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 AR0045047 (“Permit”) to Respondent on December 3, 2012. The Permit became effective on January 1, 2013. DEQ issued a Permit Minor

Modification to Respondent on November 20, 2015. The Permit became effective on December 1, 2015, and expired on December 31, 2017.

10. On January 10, 2017, and April 4, 2017, DEQ notified Respondent that the permit would expire on December 31, 2017, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than July 4, 2017.

11. On July 8, 2017, Respondent submitted a Permit renewal application. On August 8, 2017, and again on August 30, 2017, DEQ notified Respondent that the Permit renewal application was incomplete.

12. On September 7, 2017, DEQ received a Permit renewal application with additional information from Respondent.

13. On September 7, 2017, the Permit was placed on administrative hold for minerals.

14. On November 29, 2017, DEQ notified Respondent via letter that the Permit renewal application was deemed administratively complete.

15. On April 10, 2018, DEQ and Respondent entered into Consent Administrative Order LIS 18-018 for failure to submit a complete renewal application in accordance with Part III, Section D, Condition 10 of the Permit.

#### July 9, 2020 Inspection

16. On July 7, 2020, DEQ received a complaint that the facility was overflowing into the yards of the neighboring areas and running into Mill Creek and Lake Desoto.

17. On July 7, 2020, DEQ requested information from Respondent concerning the complaint.

18. On July 9, 2020, DEQ conducted a Compliance Evaluation Inspection in response to the complaint received on July 7, 2020. During the inspection, DEQ documented the following:

- a. The activated sludge plant is aging and deteriorating;

- b. Excessive infiltration to the collection system caused the sludge blanket to wash out to the sand filter beds;
- c. Solids were observed in the sand filter beds; and
- d. Chlorine tablets were not in contact with the effluent.

These conditions demonstrate Respondent's failure to properly operate and maintain the facility in violation of Part III, Section B, Condition 1 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

19. On July 9, 2020, DEQ received Respondent's response to the request for information regarding the July 7, 2020 complaint.

20. On August 12, 2020, DEQ notified Respondent via letter of the July 9, 2020 inspection results and requested a written response for each violation cited be submitted to DEQ within thirty (30) calendar days of receipt of the letter.

#### August 17, 2020 Inspection

21. On August 13, 2020, DEQ received a complaint that the facility behind the Brookshire Grocery Store in Hot Springs was overflowing.

22. On August 17, 2020, DEQ conducted a Reconnaissance Inspection in response to the August 13, 2020 complaint. During the inspection, DEQ documented the following:

- a. There was excessive corrosion of the platforms and walkways of the package plant;
- b. The aeration system is not working properly—a blower was down and the air distribution system was deteriorated and non-functional;
- c. Thick, gray foam and noxious odors were noted in the aeration basin;
- d. Wastewater was not evenly distributed on the sand filter beds;

- e. Excessive solids and algae were noted on the surface of the sand filter media; and
- f. The containment structure for the sand filter beds had allowed an overflow of wastewater.

These conditions demonstrate Respondent's failure to properly operate and maintain the facility in violation of Part III, Section B, Condition 1 of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

23. On August 26, 2020, DEQ and Respondent met via Zoom to discuss the inspection findings, continuing effluent violations, and the condition of the facility.

24. On August 26, 2020, DEQ notified Respondent of the August 17, 2020 inspection results via certified letter and requested a written response for each violation cited be submitted to DEQ within thirty (30) calendar days of receipt of the letter.

25. On August 26, 2020, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

26. The review revealed that Respondent reported the following violations of the permitted effluent discharge limits detailed in Part I, Section A of the Permit from August 1, 2017 through August 31, 2020:

- a. Four (4) violations of Fecal Coliform Bacteria;
- b. Three (3) violations of Carbonaceous Biochemical Oxygen Demand;
- c. Two (2) violations of Ammonia Nitrogen; and
- d. Two (2) violations of Total Suspended Solids.

27. Each of the eleven (11) discharge limitation violations listed in Paragraph 26 above constitutes a separate permit violation for a total of eleven (11) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

28. On August 27, 2020, DEQ requested that Respondent submit a list of entities connected to the facility to DEQ by September 18, 2020.
29. On September 1, 2020, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP), certified by a Professional Engineer (PE) licensed in the state of Arkansas; written responses to the July 9, 2020 and August 12, 2020 inspections; and the contract for the operator.
30. On September 15, 2020, Respondent submitted a list of entities connected to the facility and their estimated flow.
31. On September 23, 2020, Respondent submitted written responses to the July 9, 2020 and August 12, 2020 inspections.
32. On September 24, 2020, DEQ notified Respondent by letter that the inspection responses were adequate.
33. On September 25, 2020, Respondent submitted the contract for the operator.
34. On October 15, 2020, Respondent submitted a CAP to DEQ with a final compliance date of July 31, 2021.
35. On October 15, 2020, DEQ notified Respondent the CAP, dated October 15, 2020, was approved with the following comment:
  - a. Submit a timeline for the submittal of the required permitting for the proposed new lagoon wastewater treatment plant. If a timeline cannot be provided, submit calculations to DEQ on or before October 23, 2020, demonstrating that the new blowers and six wall-mounted Aero-Mod aeration assemblies are adequate to provide enough oxygen for treatment.
36. On October 23, 2020, Respondent submitted a timeline for the submittal of the required permitting for the proposed new lagoon wastewater treatment plant.

37. On October 26, 2020, DEQ requested that respondent submit an interim operating plan detailing actions that will be taken to remove wastewater from the facility while Arkansas Department of Transportation is widening the highway.

38. On November 6, 2020, Respondent submitted an interim operating plan.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of the Order, Consent Administrative Order LIS 18-018 shall be closed.
2. Respondent shall comply with the existing Permit until the effective date of the renewal Permit.
3. Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP submitted on October 15, 2020, for the repairs the existing wastewater treatment system. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.
4. On or before May 31, 2021, Respondent shall submit to DEQ a State Construction Permit application to construct a new wastewater treatment plant that is sized appropriately for the number and types of connections to the system and capable of consistently meeting the permit effluent discharge limitations set forth in Part I Section A of the Permit.
5. Respondent shall complete construction and achieve compliance with the effluent limitations in the Permit no later than eighteen (18) months from the effective date of the State Construction Permit.
6. 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 compliance with the Permit.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Two Hundred Dollars (\$5200.00), of which Five Thousand Two Hundred Dollars (\$5200.00) shall be conditionally SUSPENDED and DISMISSED by DEQ. The suspension and subsequent 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 Five Thousand Two Hundred Dollars (\$5200.00) shall be come due and payable immediately to DEQ. 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.

8. 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, 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The undersigned representative of Respondent certifies that he or she is a Commissioner of the Respondent and thus authorized to execute this Order and to legally bind Respondent to its terms and conditions. Execution of this Order by an individual other than a Commissioner of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 10 DAY OF April, 2021.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Mountain Top Suburban Improvement District No. 66 of Garland County, Arkansas  
d/b/a Village Square Shopping Center

BY: Michael A Rogers  
(Signature)

Michael D Rogers  
(Typed or printed name)

TITLE: Commissioner

DATE: 4-10-21