

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Lake Hamilton School District No. 5  
205 Wolf Street  
Pearcy, AR 71964

LIS No. 22- **037**  
Permit No. AR0045624  
AFIN 26-00121

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 Lake Hamilton School District No. 5 (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 school with a wastewater treatment facility (“facility”) located at 205 Wolf Street, Pearcy, Garland County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Lost Creek, thence to Lost Creek, thence to Little Mazarn Creek, thence to Lake Hamilton, thence to Lake Catherine, thence to the Ouachita River in Segment 2F 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 AR0045624 (“Permit”) to Respondent on June 27, 2011, with an effective date of July 1, 2011, and an expiration date of June 30, 2016. DEQ issued a renewal Permit on September 21, 2016. The Permit renewal became effective on October 1, 2016, and expired on September 30, 2021. The Permit is administratively continued pursuant to APC&EC Rule 6.201 until DEQ issues the renewal Permit.

10. On March 23, 2017, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent limitations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

11. On April 10, 2017, Respondent submitted a CAP to DEQ with a final compliance date of July 31, 2017.

12. On April 13, 2017, DEQ sent Respondent a letter approving the CAP submitted on April 10, 2017. The letter also asked Respondent to submit a certification of compliance to DEQ by September 1, 2017, certifying that the corrective actions detailed in the CAP submitted on April 10, 2017, had been completed and the facility was in compliance with the effluent limitations of the Permit.

13. On November 10, 2017, Respondent submitted a certification of compliance from a P.E. licensed in the state of Arkansas. The certification stated that the CAP was complete and the facility was in compliance with the effluent limitations of the Permit.

14. On September 1, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

15. 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 September 1, 2018, through July 31, 2021:

- a. Nineteen (19) violations of Ammonia Nitrogen;
- b. Fourteen (14) violations of Total Suspended Solids;
- c. Nine (9) violations of Fecal Coliform Bacteria;
- d. Eight (8) violations of Oil & Grease;

- e. One (1) violation of Dissolved Oxygen; and
  - f. One (1) violation of Carbonaceous Biochemical Oxygen Demand.
16. Each of the fifty-two (52) discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of fifty-two (52) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
17. On October 1, 2021, Respondent and DEQ met to discuss the violations of the permitted effluent discharge limits.
18. On October 4, 2021, DEQ sent Respondent a letter requesting a revised CAP to address the violations of the permitted effluent discharge limitations. The CAP was to have a revised milestone schedule, final date of compliance, and be certified by a P.E. licensed in the state of Arkansas.
19. On October 14, 2021, Respondent emailed DEQ and provided an update on the corrective actions underway at the facility to address the effluent violations.
20. On November 5, 2021, DEQ performed a follow-up review of the DMRs submitted by Respondent in accordance with the Permit.
21. 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, 2021, through September 30, 2021:
- a. Two (2) violations of Ammonia Nitrogen;
  - b. Two (2) violations of Total Suspended Solids;
  - c. One (1) violation of Fecal Coliform Bacteria; and
  - d. One (1) violation of Dissolved Oxygen.

22. Each of the six (6) discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of six (6) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. On December 6, 2021, Respondent submitted a CAP to DEQ with a milestone schedule for the CAP tasks and a final date of compliance of October 31, 2022.

24. On December 10, 2021, DEQ notified Respondent via letter that the CAP submitted on December 6, 2021, was adequate with the following comment:

- a. Please submit quarterly progress reports to DE detailing the corrective actions taken to come into compliance with the effluent limits of the Permit. The first progress report will be due on January 15, 2022, and quarterly thereafter until the CAP is completed.

25. On January 18, 2022, Respondent submitted a CAP progress report detailing the corrective actions taken to achieve compliance with the Permit.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The terms, milestone schedule, and final compliance date of October 31, 2022, shall be fully enforceable as terms of this Order.

2. Respondent shall continue to 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 until this Order is closed. Respondent shall submit the final compliance report by October 31, 2022.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Six Hundred Dollars (\$5600.00), of

which Five Thousand Six Hundred Dollars (\$5600.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Five Thousand Six Hundred Dollars (\$5600.00) 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 Five Thousand Six Hundred Dollars (\$5600.00) 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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

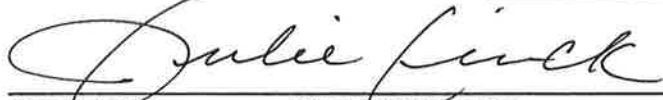
public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of 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.

9. 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.



10. 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 21<sup>ST</sup> DAY OF MARCH, 2022.

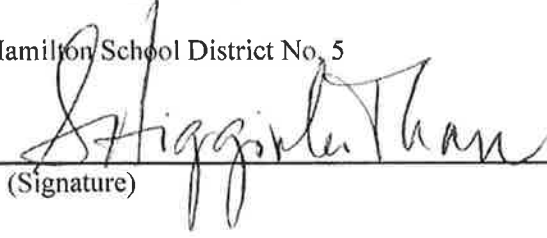


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Lake Hamilton School District No. 5

BY:

  
(Signature)

Shawn Higginbotham

(Typed or printed name)

TITLE: Superintendent

DATE: March 18, 2022