

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Randall Christy - Statue Road Inn
909 Passion Play Road
Eureka Springs, AR 72632

LIS No. 23- 039
Permit No. AR0044300
AFIN 08-00029

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

The issues herein having been settled by the agreement of the Randall Christy - Statue Road Inn (Respondent) and the Division of Environmental Quality (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 facility ("facility") located at 909 Passion Play Road, Eureka Springs, Carroll County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Leatherwood Creek, thence to the Upper White River/Table Rock Lake in Segment 4K of the White 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 a 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 AR0044300 (“Permit”) to Respondent on January 16, 2019. The Permit became effective on February 1, 2019, and expires on January 31, 2024.

10. On November 1, 2022, DEQ conducted a review of 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 limits detailed in Part I, Section A of the Permit from October 1, 2019, through September 30, 2022:

- a. Eighteen (18) violations of Ammonia Nitrogen;
- b. Three (3) violations of Dissolved Oxygen;
- c. Four (4) violations of Total Suspended Solids;
- d. Two (2) violations of Fecal Coliform Bacteria; and
- e. Two (2) violations of Carbonaceous Biochemical Oxygen Demand.

12. Each of the twenty-nine (29) discharge limitation violations listed in Paragraph 11 above constitutes a separate permit violation for a total of twenty-nine (29) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. The review of the DMRs also revealed that Respondent failed to conduct analysis for Total Suspended Solids and Carbonaceous Biochemical Oxygen Demand for the monitoring period ending December 31, 2019. Failure to monitor the effluent in accordance with the requirements set forth in Part I, Section A of the Permit is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

14. On October 26, 2022, DEQ conducted a Compliance Evaluation Inspection of the facility. During the inspection, DEQ observed the following:

- a. Respondent reported No Discharge on the DMR for the monitoring period of May 2022. Flow records at the facility indicate that discharges occurred during the month of May 2022. Failure to sample the discharge during the monitoring period is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3). Knowingly making any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under the Act is a violation of Ark. Code Ann. § 8-4-217(a)(4) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

- b. Respondent failed to monitor the flow twice weekly as set forth in Part I, Section A of the Permit. Failure to monitor the flow twice per week is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. The following conditions demonstrate Respondent's failure to maintain the facility and systems of treatment and control that are installed or used by Respondent to achieve compliance with the Permit. Failure to operate and maintain the facility properly is a violation of Part II, Section B, Condition 1.A and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
 - (1) The seam connecting the two concrete sections of the primary treatment plant and a pipe fitting were leaking;
 - (2) The sand filter distribution heads were missing;
 - (3) Solids and leaves have accumulated in the sand filters; and
 - (4) A section of pipe connecting the settling tank to the splitter box was cut open.

15. On December 12, 2022, DEQ notified Respondent via mail of the Inspection Report and requested a written response to the violations be submitted, with documentation, by December 27, 2022.

16. On December 19, 2022, Respondent submitted a response to the Inspection Report with proposed corrective actions to address the violations documented during the October 26, 2022 inspection and included a milestone schedule for the corrective actions.

17. On April 27, 2023, DEQ conducted another review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

18. 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 October 1, 2022, through March 31, 2023:

- a. Four (4) violations of Ammonia Nitrogen;
- b. One (1) violation of Total Suspended Solids; and
- c. Two (2) violations of Carbonaceous Biochemical Oxygen Demand.

19. Each of the seven (7) discharge limitation violations listed in Paragraph 18 above constitutes a separate permit violation for a total of seven (7) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall implement and complete the corrective actions set forth in its December 19, 2022 Inspection Response, and Respondent shall comply with the milestone schedule set forth in the Inspection Response. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a final Inspection Corrective Action Report demonstrating that all violations documented in the October 26, 2022 Inspection Report have been resolved. The Inspection Corrective Action Report shall include, at minimum, photographic documentation of the repairs, copies of the monthly flow logs, and analytical results, including chain of custody, for all samples collected for the period beginning December 2022 through March 2023.

2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Corrective Action Plan (CAP) developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in Findings

of Fact Paragraph 11 and prevent future violations and include a reasonable milestone schedule with a date of final compliance no later than December 31, 2025. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

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 compliance with the permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by December 31, 2025.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Nine Thousand Dollars (\$9000.00), or one-half of the full civil penalty of Four Thousand Five Hundred Dollars (\$4500.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. 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.

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, 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. 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.

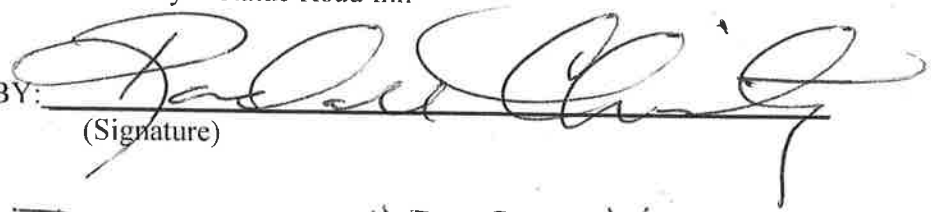
SO ORDERED THIS 24 DAY OF June, 2023.



CALEB J. OSBORNE, DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Randall Christy – Statue Road Inn

BY: 
(Signature)

RANDALL CHRISTY
(Typed or printed name)

TITLE: Owner

DATE: 5/24/23