

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Heinke Road Property Owners
Sewer Improvement District No. 34
P.O. Box 190425
Little Rock, AR 72219

LIS No. 20- 163
Permit Number AR0044393
AFIN 63-01068

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 Heinke Road Property Owners Sewer Improvement District No. 34 (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 plant (“Facility”) located at the northwest corner of the intersection of Venus Drive and Heinke Road in Shannon Hills, Saline County, Arkansas.

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.

2. Respondent discharges treated wastewater to an unnamed tributary of Little Fourche Creek, thence to Little Fourche Creek, thence to Fourche Creek, thence to the Arkansas River in Segment 3C of the Arkansas 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)(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 AR0044393 (“Permit”) to Respondent on August 30, 2015. The Permit became effective on September 1, 2015, and expires on August 31, 2020.
10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.
11. Respondent intends to operate this facility beyond the expiration date of the current permit, August 31, 2020.
12. On September 4, 2019, and December 4, 2019, Respondent was notified that the Permit would expire on August 31, 2020, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than March 4, 2020.
13. On December 12, 2019, DEQ again notified Respondent that a complete Permit Renewal Application must be submitted by March 4, 2020, in order for Permit coverage to continue past the Permit expiration date.
14. DEQ received a permit renewal application from Respondent on March 4, 2020. On March 9, 2020, DEQ notified Respondent that the permit renewal application was incomplete.
15. The complete Permit renewal application was not received by March 4, 2020. Failure to submit an administratively complete Permit renewal application by March 4, 2020, is a violation of Part III, Section D, Condition 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit an administratively complete permit renewal application.

2. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1000.00), or one-half of the full civil penalty of Five Hundred Dollars (\$500.00), 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. Such payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
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, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the 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 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 (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 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.

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. The undersigned representative of the Respondent certifies that he or she is a Commissioner of Respondent and thus authorized to execute this Order and to bind legally 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 30 DAY OF July, 2020.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Heinke Road Property Owners Sewer Improvement District No. 34

BY: Terry Laird
(Signature)

Terry Laird
(Typed or printed name)

TITLE: Commissioner for Heinke Rd. Property
Owners Sewer Imp. Dist. #34

DATE: July 21, 2020

CK# 1445

FILED
SALINE COUNTY
STATE OF ARKANSAS COUNTY CLERK

2016 MAR -4 AM 9:54

RECEIVED
BY:

OATH OF OFFICE AC

I, Terry Laird do solemnly swear (or affirm)
that I will support the Constitution of the United States and the
Constitution of the State of Arkansas, and I will faithfully discharge the
duties of the office of the Commissioner for the Heinke Road upon
which I am about to enter. Property Owners Sewer Imp. Dist. #34

Terry Laird
(Signature)

Sworn to and subscribed before me, Doug Curtis a duly commissioned and
acting County Clerk, in and for the County of Saline, State of Arkansas, on
this 4 day of March, 2016.


Doug Curtis
County Clerk


By: Allison Cain, D.C.

ADEQ

ARKANSAS
Department of Environmental Quality

Memorandum

TO: Becky W. Keogh, Director 

FROM: Leslie Allen-Daniel, Enforcement Analyst, OWQ 

SUBJECT: **Request for Signature on Previously Approved CAO**
Heinke Road Property Owners

DATE: July 28, 2020

The enclosed Consent Administrative Order Amendment was received by the department on July 22, 2020 and is ready for your signature. The approved Order Amendment was sent to the facility on July 10, 2020. Legal has reviewed the signed CAO and determined it has not been altered.

Thank you.