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ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Bergman Public Schools
8949 Hwy 7 North
Bergman, AR 72615

LIS No. ~~17~~ 18-008
Permit No. 4918-WR-1 (expired)
AFIN 05-00118

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

The issues herein having been settled by the agreement of the Bergman Public Schools ("Respondent") and the Arkansas Department of Environmental Quality (ADEQ or "Department"), 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 decentralized wastewater treatment system with drip irrigation dispersal ("facility") located in Boone County, Arkansas. The facility is located at least 2000 feet from a tributary of Sugar Orchard Creek in Stream Segment 4I of the White River Basin.
2. Respondent is regulated pursuant to APC&EC Regulation No. 17, Arkansas Underground Injection Control (UIC) Code.

3. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (“the Act”) to issue permits in the state of Arkansas pursuant to APC&EC Regulations and to initiate an enforcement action for any violation of a permit.

4. 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

5. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes ADEQ 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 regulation or permit issued pursuant to the Act.

6. 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.”

7. No-Discharge Permit 4918-WR-1 (“Permit”) was issued to Respondent on July 12, 2012. The Permit became effective on August 1, 2012, and expired on July 31, 2017.

8. Part III, Condition 23 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. The complete permit renewal application was due to the Department by February 1, 2017.

9. The complete Permit renewal application was not received by February 1, 2017. Failure to submit the Permit renewal application by February 1, 2017, is a violation of Part III, Condition 23 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

10. The complete Permit renewal application was received by the Department on February 21, 2017.

11. Respondent has continued to operate this facility beyond the expiration date of the current Permit, July 31, 2017.

12. On October 4, 2017, the Department conducted an inspection of the facility. The inspection revealed the following violation:

- a. Respondent was operating the facility with an expired Permit. This action violates APC&EC Regulation 17.401 and therefore Ark. Code Ann. § 8-4-217(a)(3).

13. During the October 4, 2017 inspection, the following issues were noted:

- a. The operator did not have a Class II wastewater operator license.
- b. There were no records of activities related to the removal of wastewater from the septic tanks.
- c. The Waste Management Plan (WMP) did not represent the actual operation of the facility, i.e., there were four septic tanks in the collection system and there was no mention of chlorination as a treatment process.
- d. An aerator and several bio-filtration pods were not operational and there was shrub growth in the drip fields.
- e. There were no signs posted at the drip disposal area indicating that the area is irrigated with treated wastewater effluent.
- f. There was a small leak at the distribution valve for the east drip field.

14. On October 26, 2017, the Department sent Respondent the inspection report and requested a written response for each violation that was noted. On November 27, 2017, the Department received the Respondent's response to the violations cited in the inspection report.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the expired Permit until issuance of the renewal Permit.
2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit any additional information required by the Department for the permit application.
3. Within sixty (60) calendar days from the effective date of this Order, Respondent shall submit written and photographic documentation of the corrective actions that were performed to address the issues specified in Paragraph 13 of the Findings of Fact.
4. 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 (\$1,000.00), 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, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) 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 Arkansas Department of Environmental Quality, and mailed to the attention of:

ADEQ, 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, ADEQ 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 said Order. If Respondent should fail to meet any such requirements or deadlines, the Respondent consents and agrees to pay on demand to ADEQ 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 which may be available to ADEQ 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 ADEQ, 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. ADEQ 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 ADEQ 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 ADEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by ADEQ, submit any additional information or changes requested, or take

additional actions specified by ADEQ to correct any such deficiencies. Failure to adequately respond to such Notice of Deficiency within the timeframe specified in writing by ADEQ 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 Regulation No. 8 and shall not be effective until thirty (30) calendar days after public notice is given. ADEQ retains the right to rescind this Order based upon the comments received within the thirty-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.

10. Nothing in this Order shall be construed as a waiver by ADEQ 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 which 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 19 DAY OF January, 2017.⁸


BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Bergman Public Schools

BY: 
(Signature)

Joe B. Couch
(Typed or printed name)

TITLE: Superintendent

DATE: 22 Dec. 17