

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Jessieville School District and
Fountain Lake School District
P.O. Box 4
Jessieville, AR 71949

LIS No. 17- **055**
Permit No. AR0048194
AFIN 26-00272

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 Jessieville School District and Fountain Lake School District (“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 school district with a wastewater treatment plant (“facility”) located at 5050 North Highway 7, Hot Springs Village, Garland County, Arkansas.
2. Respondent discharges treated wastewater through a pipeline to an unnamed tributary of Coleman Creek, thence to Coleman Creek, thence to the Middle Fork of 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. ADEQ is authorized under the Arkansas Water and Air Pollution Control Act (“the 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, regulation, or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [ADEQ].

7. 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.

8. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. NPDES Permit Number AR0048194 (“Permit”) was issued to the Respondent on March 16, 2012. The Permit became effective on April 1, 2012. A minor modification to the Permit became effective on March 10, 2013. The Permit expired on March 31, 2017.

Failure to Submit a Permit Renewal Application by the Deadline

10. According to Part III, Section D, Item 10 of the Permit, Respondent must submit a complete Permit renewal application at least 180 days prior to the expiration date of the Permit in order to continue an activity regulated by the Permit after the expiration date of the Permit.

11. On April 5, 2016, the Department notified Respondent via letter, and again on July 5, 2016, via certified letter that the current Permit would expire on March 31, 2017, and if Respondent wished to continue discharging wastewater after the expiration date of the existing Permit, a complete renewal application must be received by the Department no later than October 2, 2016.

12. The Department received the Permit renewal application on October 10, 2016. Additional Permit renewal information was received on October 18, 2016. Respondent was notified via certified letter dated October 25, 2016, that a complete Permit renewal application had been received and deemed administratively complete. Failure to submit the Permit renewal application by October 2, 2016, is a violation of Part III, Section D, Item 10 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

13. On June 9, 2017, ADEQ issued a renewal Permit to Respondent with an effective date of July 1, 2017, and an expiration date of June 30, 2022.

Effluent Violations

14. On November 9, 2015, the Department conducted a review of the certified Discharge Monitoring Reports (DMRs) submitted by the facility in accordance with the Permit.

15. As a result of the review, on November 9, 2015, the Department sent a letter to Respondent requesting Respondent to submit a Corrective Action Plan (CAP) to address the

effluent violations that were reported. The CAP was to be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas and include a milestone schedule and a final date of compliance.

16. On February 19, 2016, a CAP was received by the Department. The CAP was certified by a P.E. licensed in the state of Arkansas and included a milestone schedule and a final date of compliance of June 1, 2016.

17. On February 19, 2016, the Department sent a letter to Respondent accepting the CAP received by the Department on February 19, 2016. The letter also requested that Respondent submit a letter to the Department by June 15, 2016, certifying all the corrective actions listed in the CAP had been completed and the facility was in compliance with the effluent limits of the Permit. If the facility was not in compliance or the corrective actions had not been completed, the letter requested a revised CAP be submitted.

18. On September 14, 2016, the Department conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. Six (6) Ammonia Nitrogen exceedances,
- b. Four (4) Carbonaceous Biological Oxygen Demand exceedances, and
- c. Two (2) Total Suspended Solids exceedances during the calendar years of 2015 and 2016, to date. These exceedances are violations of Part 1 Section A of the Permit and therefore violations of Ark. Code Ann. § 8-4-217(a)(3).
- d. The filter beds have not been maintained: one filter bed has solids and vegetation established on the media surface and the other bed is out of service and scheduled for cleaning and media replacement. This is a

violation of Part III Section B Condition 1.A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3). The cleaning of filter beds and replacement media was to be completed on or before June 1, 2016, as stated in the CAP received on February 19, 2016.

- e. The CAP received on February 19, 2016, requires monitoring sludge volume monthly using a settleometer. The sludge volume is not being monitored monthly using a settleometer, and thus, Respondent is not in compliance with the CAP received on February 19, 2016.

19. On September 23, 2016, the Department notified Respondent of the results of the inspection.

20. On September 27, 2016, the Department sent a certified letter to the Respondent requesting a certification that the facility was in compliance with the effluent limits of the Permit or a revised CAP that includes a milestone schedule with dates and a final date of compliance.

21. On October 12, 2016, the Department received the Respondent's response to the violations cited in the inspection report dated September 14, 2016. Respondent hired an engineer to assess the facility and submit to ADEQ a new corrective action plan that addressed the actions necessary to bring the facility into full permit compliance. The Department deemed this response to be adequate and accepted the response.

22. On October 28, 2016, a revised CAP was received by the Department. The revised CAP was certified by a P.E. licensed in the state of Arkansas and included a milestone schedule and a final date of compliance of March 31, 2017. The corrective actions listed in the CAP included repairs to Filter No. 1 & 2 and new grating for the top of the package plant.

23. On November 15, 2016, the Department sent a letter to Respondent accepting the CAP received by the Department on October 28, 2016.

24. On August 7, 2017, the Department conducted a review of the certified DMRs submitted by the facility in accordance with the Permit. The review revealed that Respondent reported the following forty-seven (47) violations of the permitted effluent discharge limits for four (4) pollutants from February 1, 2014 through June 30, 2017, in violation of Part I Section A of the Permit:

- a. Twenty-two (22) violations for Ammonia Nitrogen;
- b. Twelve (12) violations for Carbonaceous Biochemical Oxygen Demand;
- c. Seven (7) violation for Fecal Coliform; and
- d. Six (6) violations for Total Suspended Solids.

25. Each of the forty-seven (47) effluent limitation violations listed in Paragraph 24 above constitutes a separate permit violation for a total of thirty-seven (47) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. If Respondent has completed all the actions listed in the CAP dated October 28, 2016, and is in compliance with all permitted effluent limits, then upon the effective date of this Order, Respondent shall submit a letter from a P.E. licensed in the state of Arkansas certifying that all of the corrective actions listed in the CAP dated October 28, 2016, have been completed and the facility is in compliance with the effluent limitations of the renewal Permit and can remain in compliance on a consistent basis.

2. If Respondent is unable to immediately comply with all permitted effluent limits, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to

ADEQ, for review and approval, a revised CAP developed by a P.E. licensed in the state of Arkansas. The CAP shall, at minimum, include a reasonable milestone schedule with a date of final compliance no later than date December 31, 2018, and the CAP shall detail the methods and best available technologies that will be used to correct the violations listed in Findings of Fact Paragraph 24 and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms of the revised CAP, milestone schedule, and final compliance date of December 31, 2018. The milestone schedule and final compliance date of December 31, 2018, shall be fully enforceable as terms of this Order.

3. If Respondent submits a revised CAP as referenced in Paragraph 2 above, Respondent shall submit quarterly progress reports detailing the progress that has been made toward achieving compliance with final permitted effluent limits. The progress reports shall be due 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.

4. If Respondent submits a revised CAP as referenced in Paragraph 2 above, then on or before January 31, 2019, Respondent shall provide written certification to ADEQ Office of Water Quality, Enforcement Branch that the violations cited in the Findings of Fact Paragraph 24 have been corrected and the facility is in compliance with the requirements of its renewal Permit as of December 31, 2018.

5. All submittals shall be sent to:

Arkansas Department of Environmental Quality
Office of Water Quality Enforcement Branch
5301 Northshore Drive
North Little Rock, AR 72118

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a reduced civil penalty of One Thousand Dollars (\$1,000.00).

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:

Arkansas Department of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

The reduced civil penalty is contingent upon the Respondent complying with the requirements of the Order and Agreement Section of this Order. In the event Respondent fails to fully comply with the Order and Agreement Section of this Order, or fails to pay the reduced sum of One Thousand Dollars (\$1,000.00), the civil penalty will revert back to the amount of Four Thousand Dollars (\$4,000.00), the balance of which will be due and payable immediately to ADEQ. 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.

7. 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.

8. If any event, including but not limited to an act of nature, occurs which 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.

9. ADEQ 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 ADEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. 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.

11. 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.

12. 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.

13. This Order has been reviewed and approved by the School Board for the Respondent in a duly convened meeting with a quorum present. See copy of [meeting minutes or resolution] attached as Exhibit A.

14. The School Board for the Respondent has authorized the Superintendent to sign this Order on behalf of the Respondent. See Exhibit A.

15. The School Board for the Respondent has authorized the Superintendent to expend funds for compliance activities required by this Order including but not limited to the payment of the civil penalty set out in this Order. See Exhibit A.

SO ORDERED THIS 30 DAY OF August, 2017.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Jessieville School District and Fountain Lake School District

BY: Ralph Carter
(Signature)

Ralph Carter
(Typed or printed name)

TITLE: Superintendent

DATE: 8/23/17