

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Harmon Road Properties, LLC  
17482 Lookout Tower Road  
Fayetteville, AR 72704

LIS No. 17- 015  
State Permit No. 4860-WR-1 (expired)  
AFIN 72-01611

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 Harmon Road Properties, LLC (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 for the Westridge Subdivision (facility) located at the Southeast corner of the intersection of Highway 16 and Highway 644, Fayetteville, Washington County, Arkansas.
2. 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].

3. 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.

4. 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."

5. The facility is regulated under No-Discharge Permit 4860-WR-1 (Permit) issued to Respondent on November 30, 2011. The Permit became effective on December 1, 2011 and expired on November 30, 2016.

6. According to Part III, Item 23 of the Permit, Respondent must submit a complete permit renewal application at least 180 days (June 3, 2016) prior to the expiration date of the Permit in order to continue activity regulated by the Permit after the expiration.

7. ADEQ received the Permit renewal application on September 30, 2016. Notice was sent to Respondent on October 19, 2016, stating that the renewal application has been deemed administratively complete. Failure to submit the Permit renewal application by June 3, 2016, is a violation of Part III, Condition 23 of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

**CAO LIS 15-011**

8. On January 21, 2015, Respondent and ADEQ entered into CAO LIS 15-011 to resolve effluent violations, surfacing in the drip field, and posting of the drip field.

9. As required by CAO LIS 15-011, Respondent submitted a Corrective Action Plan (CAP) with a milestone schedule developed by a Professional Engineer (P.E.) licensed in the State of Arkansas that outlined the steps Respondent would take to correct the violations.

10. On October 30, 2015, the Department conducted a compliance inspection at the facility in response to a complaint. The inspection findings included the following on-going violations:

- a. Surfacing was observed in areas on the east side of the drip field. This condition violated Condition 2 and 9 of Part II of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).  
Recurrent Violation.
- b. Signs were not posted around the disposal area indicating that the area is irrigated with treated wastewater effluent. One sign was observed on the fence around the Bioclere unit. However, additional signs need to be posted around the drip field. This omission violated Part II, Condition 11 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).  
Recurrent Violation.
- c. Respondent failed to report permit violations to the Enforcement Branch. This failure violated Condition 13 of Part III of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

11. On December 2, 2015, the Department notified Respondent of the results of the inspection.

12. On December 16, 2015, the Department conducted a teleconference with Respondent to address the inspection findings.

13. On April 4, 2016, Respondent submitted the CAP final report.

14. On July 26, 2016, the Department notified Respondent that due to continuing effluent violations and surfacing in the drip field, the current CAP would not be closed and that a new CAP or an amended CAP was required.

15. The Department conducted a review of certified Monthly Monitoring Reports (MMRs) submitted by the Facility in accordance with the Permit.

16. 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 April 4, 2016, through October 25, 2016:

- a. Six (6) violations for Carbonaceous Biochemical Oxygen Demand;
- b. Six (6) violations for Total Suspended Solids; and
- c. One (1) violation for Fecal Coliform Bacteria.

17. Each of the thirteen (13) effluent limitation violations listed in Paragraph 16 constitutes a separate permit violation for a total of thirteen (13) 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 comply with the existing Permit until issuance of the new Permit.

2. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to ADEQ, for review and approval a new CAP developed by a Professional Engineer 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 March 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 paragraphs 10.a, 10.c., 16, and prevent future violations. Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date of March 31, 2018 contained in the CAP and the approved CAP, milestone schedule and final compliance date of March 31, 2018 shall be fully enforceable as terms of this Order. The CAP shall be submitted to:

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

3. On or before the effective date of this Order, Respondent shall submit to the Department photographs demonstrating compliance with Condition 11 of the Specific Conditions section of the Permit. Photographs shall depict, in accordance with the Permit, signs posted around the disposal area indicating that the area is irrigated with treated wastewater effluent.

4. Respondent shall submit quarterly progress reports detailing the work completed as outlined in the approved CAP, to achieve compliance with effluent limits and permit conditions. The first progress report shall be due ninety (90) days from the effective date of this Order and shall be submitted quarterly thereafter until the corrective actions specified in the approved CAP are completed.

5. On or before April 30, 2018, Respondent shall submit to ADEQ a final report certified by a P.E. licensed in the State of Arkansas and attest that the facility has achieved final compliance with all permitted conditions.

6. Upon the effective date of this CAO, CAO LIS 15-011 will be closed.

7. In compromise and full settlement of the violations specified in the Findings of Fact, the Respondent agrees to pay a civil penalty of **One Thousand Six Hundred Dollars (\$1,600.00)**. 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

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.

8. 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 the Respondent to comply with the requirements of this Order.

9. 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 the Respondent with the requirements or deadlines of this Order, the 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.

10. ADEQ may grant an extension of any provision of this Order, provided that the 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 the 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 the Respondent and the length of the delay attributable to such circumstances shall rest with the 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.

11. 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.

12. 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 10<sup>th</sup> or 25<sup>th</sup> 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.

13. 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 the Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve the Respondent of its responsibilities for obtaining any necessary permits.

14. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member 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 21<sup>st</sup> DAY OF February, 2017.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Harmon Road Properties, LLC

BY: Steve Hesse  
(Signature)

STEVE A. HESSE  
(Typed or printed name)

TITLE: MANAGER - HARMON ROAD PROPERTIES, LLC

DATE: 2-3-17