

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

United States Department of the Interior  
National Park Service  
402 North Walnut, Suite 136  
Harrison, AR 72601

LIS No. 18-075

Buffalo National River-Buffalo  
Point Upper Sewer Plant (U2-A)  
and

Permits No. AR0034959  
AFIN 45-00017

Buffalo National River-Buffalo  
Point Lower Sewer Plant (U2-B)

Permits No. AR0034941  
AFIN 45-00256

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 United States Department of the Interior, National Park Service ("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 the Buffalo National River-Buffalo Point Upper Sewer Plant ("U2-A") that services the National Park Service's Buffalo Point Concession located at 2229 Hwy 268 East in Yellville, Marion County, Arkansas and discharges to an unnamed tributary of Panther

Creek, thence to Panther Creek, thence to the Buffalo National River, thence to the White River in Segment 4J of the White River Basin.

2. Respondent operates the Buffalo National River-Buffalo Point Lower Plant (“U2-B”) that services the National Park Service’s Buffalo Point Campground located at 2268 Hwy 268 in Yellville, Marion County, Arkansas and discharges to the Buffalo National River, thence to the White River in Segment 4J 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. 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. ADEQ issued NPDES Permit Number AR0034959 (“Permit U2-A”) to Respondent for the U2-A facility on January 14, 2014, with an effective date of February 1, 2014, and an expiration date of January 31, 2019. Permit U2-A was modified on May 1, 2018.

7. ADEQ issued NPDES Permit Number AR0034941 (“Permit U2-B”) to Respondent for the U2-B facility on January 13, 2014, with an effective date of February 1, 2014 and an expiration date of January 31, 2019. Permit U2-B was modified on May 1, 2018.

8. 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].

9. Ark. Code Ann. § 8-4-217(b)(1) provides:

(b)(1) It shall be unlawful for any person to engage in any of the following acts without having first obtained a written permit from the department:

(A) To construct, install, modify, or operate any disposal system or any part thereof, or any extension or addition thereto, that will discharge into any of the waters of this state;

10. 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.

11. 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.”

12. On March 9, 2016, Respondent submitted a letter to ADEQ requesting consultation on the proposed replacement of its two (2) existing wastewater treatment plants, U2-A and U2-B.

13. In a letter dated March 22, 2016, the Department notified Respondent that replacement of U2-A and U2-B would require Respondent to obtain a State Construction Permit for each wastewater treatment plant and to modify the existing NPDES Permit for each wastewater treatment plant.

14. On May 16, 2017, Respondent submitted to the Department an application for modification of Permit U2-A and Permit U2-B; Respondent also submitted State Construction Permit applications for U2-A and U2-B.

15. On May 24, 2017, the Department notified Respondent that the applications submitted on May 16, 2017 were incomplete.
16. On May 31, 2017, Respondent submitted additional information for the State Construction Permit applications and the applications for modification of the existing NPDES Permits for U2-A and U2-B.
17. On June 15, 2017, the Department notified Respondent that the applications submitted on May 16, 2017, and supplemented on May 31, 2017, were administratively complete.
18. Respondent's State Construction Permit applications and the applications for modification of Permit U2-A and Permit U2-B were public noticed on June 22, 2017.
19. On January 17, 2018, the Department conducted a compliance evaluation inspection of the U2-A facility. ADEQ staff observed that Respondent has been performing construction activity to modify the current treatment system. Respondent began construction activities to modify the current treatment system at U2-A before receiving authorization under a state construction permit as required by APC&EC Regulation 6.202. This action violates APC&EC Regulation 6.602 and Ark. Code § 8-4-217(b)(1)(A) and therefore violates Ark. Code Ann. § 8-4-217(a)(3).
20. On February 13, 2018, the Department notified Respondent of the inspection results.
21. On February 15, 2018, the Department and Respondent conferenced by phone to discuss the inspection and the inspection response.
22. On February 22, 2018, the Department received Respondent's response to the inspection report, in which Respondent admitted that construction activity to modify the current treatment systems at U2-A and U2-B began on September 7, 2017, and that construction was approximately eighty-seven percent (87%) complete. Respondent's response included additional

information about the construction procedures and the completed construction activities, including the installation of the wastewater treatment tanks at U2-A and U2-B. Respondent also stated that construction activities at U2-A and U2-B had ceased. Respondent began construction activities to modify the current treatment system at U2-B, in addition to U2-A, before receiving authorization under a state construction permit as required by APC&EC Regulation 6.202. This action violates APC&EC Regulation 6.602 and Ark. Code § 8-4-217(b)(1)(A) and therefore violates Ark. Code Ann. § 8-4-217(a)(3).

23. On February 28, 2018, the Department conducted a compliance evaluation inspection at U2-B and confirmed that the construction activity previously conducted at U2-B had ceased.

24. On March 8, 2018, Respondent requested authorization to use the wastewater treatment tanks installed at U2-A and U2-B. In response, the Department requested that Respondent provide certification that the wastewater storage tanks installed at U2-A and U2-B were constructed according to the plans and specifications provided in the construction permit applications and that the current as-built condition of the tanks are competent and recommended for the storage of wastewater.

25. Respondent submitted a letter dated March 16, 2018, and certified by a Professional Engineer licensed in the State of Arkansas concerning the wastewater storage tanks installed at U2-A and U2-B. This letter stated that the wastewater treatment tanks installed at U2-A and U2-B appear to have been constructed according to the plans and specifications as provided in the construction permit applications and that the wastewater treatment tanks are capable and recommended for the storage of wastewater.

26. On April 5, 2018, ADEQ granted Respondent's requests for Interim Authority to use the wastewater treatment tanks installed at the U2-A and U2-B facilities for the storage of wastewater.

27. On April 30, 2018, ADEQ issued State Construction Permit Number AR0034959C and AR0034941C ("Construction Permits") to Respondent, with an effective date of May 1, 2018. On that same day, ADEQ issued modifications to Permit U2-A and Permit U2-B with effective dates of May 1, 2018.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) days of completion of construction at U2-A and U2-B, Respondent shall submit to ADEQ written certification through a Professional Engineer (PE) licensed in the State of Arkansas that U2-A and U2-B have been constructed or modified in accordance with the approved plans and specifications.

2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Four Hundred Dollars (\$2,400.00) or one-half of the full civil penalty of One Thousand Two Hundred Dollars (\$1,200.00) 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) calendar days 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.

3. 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, 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 that may be available to ADEQ by reason of failure by Respondent to comply with the requirements of this Order.

4. 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.

5. 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.

6. 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 respond adequately to such Notice of Deficiency within the timeframe specified in writing by ADEQ constitutes a failure to meet the requirements established by this Order.

7. 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.

8. 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 that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.



9. 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 17 DAY OF August, 2018.

Becky W Keogh  
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

U.S. Department of the Interior  
National Park Service

BY: MAF  
(Signature)

Mark A. Foust  
(Typed or printed name)

TITLE: Superintendent, Buffalo National River

DATE: August 8, 2018