

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Cherokee Village Sewer, Inc.
P.O. Box 720
Cherokee Village, AR 72525

LIS No. 17- *026*
Permit No. AR0034282
AFIN 68-00029

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 Cherokee Village Sewer, Inc. (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 sanitary wastewater treatment facility (facility) located at 53 Griffin Road, Cherokee Village, Sharp County, Arkansas.
2. Respondent discharges treated wastewater to the South Fork of the Spring River, and thence to the Spring River in Segment 4H 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. 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 AR0034282 (Permit) was issued to the Respondent on September 23, 2014. The Permit became effective on October 1, 2014. The Permit was modified on July 16, 2015, and the modification became effective on August 1, 2015. The Permit expires on September 30, 2019.

10. The Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed five (5) violations of the permitted effluent discharge limits for Carbonaceous

Biochemical Oxygen Demand detailed in Part I Section A of the Permit from February 1, 2016, through January 31, 2017.

11. Each of the five (5) discharge limitation violations listed in Paragraph 10 above constitutes a separate permit violation for a total of five (5) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

12. On May 1, 2014, the Department and Respondent entered into Consent Administrative Order (CAO) LIS 14-054. Respondent has complied with the terms of CAO LIS 14-054.

13. Respondent submitted a letter dated May 12, 2016, to ADEQ requesting that CAO LIS 14-054 be closed and the financial assurance funds accrued under CAO LIS 14-054 be returned to Respondent.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with all permitted effluent limits, unless a CAP is submitted as provided in Paragraph 2 of this Order and approved by ADEQ, in which case, Respondent shall comply with all permitted effluent limits no later than March 31, 2018.

2. If 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 comprehensive 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 May 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 10 and prevent future violations.

Upon review and approval by ADEQ, Respondent shall comply with the terms, milestone schedule and final compliance date of May 31, 2018 contained in the CAP; and the approved CAP, milestone schedule and final compliance date of May 31, 2018 shall be fully enforceable as terms of this Order.

3. Respondent shall submit quarterly progress reports detailing the work completed, as outlined in the approved CAP, to achieve compliance with the effluent limits of the Permit. The first progress report shall be due thirty (30) days from the effective date of this Order and shall be submitted quarterly thereafter until the corrective actions specified in the approved CAP are complete.

4. On the effective date of this Order, CAO LIS 14-054 shall be closed.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Dollars (\$2,000.00), or one-half of the full civil penalty of One Thousand Dollars (\$1,000.00) if this Order is signed and returned to the Water Division Enforcement Branch, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, prior to April 14, 2017. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer 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 16 DAY OF April, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

CHEROKEE VILLAGE SEWER, INC.

BY: Jane Daggett
(Signature)

JANE DAGGETT
(Typed or printed name)

TITLE: Pres./owner

DATE: Mar. 28, 2017