

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Happy Mart, Inc.
11108 MacArthur Drive
North Little Rock, AR 72120

LIS No. 17- 022
Permit No. AR0046086
AFIN 60-01014

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 Happy Mart, 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 convenience store with a wastewater treatment plant (facility) located at 11114 MacArthur Drive, North Little Rock, Pulaski County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Newton Creek, thence to Newton Creek, thence to White Oak Bayou, thence to the Arkansas River in Segment 3C of the Arkansas 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 AR0046086 (Permit) was issued to the Respondent on January 16, 2015, with an effective date of February 1, 2015. The Permit was modified on August 7, 2015, and expires on January 31, 2020.

10. On February 16, 2016, the Department conducted a compliance sampling inspection of the facility as a result of a complaint received by the Department. The inspection revealed the following violations:

- a. Raw sewage was observed flowing from the pump located under a broken concrete slab with a metal cover adjacent to the facility. The same violation had been observed during the inspections performed on January 18, 2013 and August 29, 2014. This is an unpermitted discharge and therefore a violation of Ark. Code Ann. § 8-4-217(a)(2).
- b. Samples of the effluent were collected from outfall 001 and analyzed for Fecal Coliform Bacteria (FCB) in the laboratory at the Department. The results for FCB were greater than 50,000 cfu/100 ml. This exceeds the Permit daily maximum limit of 2,000/cfu/100 ml and Regulation 2 water quality standards for a single sample maximum of 2,000/cfu/100 ml. This violates Part I, Section A of the Permit and Ark. Code Ann. § 8-4-217(a)(3).
- c. No chlorine tablets were observed in the chlorinator during the inspection. The same violation was observed during an inspection performed on August 29, 2014. This is a violation of Part III, Section B.1 of the Permit.

11. On March 7, 2016, the Department notified Respondent of the results of the February 16, 2016, inspection. Due to the nature and repeated violations at this facility, the Inspection Report was referred to the Water Enforcement Branch.

12. On March 9, 2016, the Department conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by the facility in accordance with the Permit.

13. 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 January 1, 2013 through December 31, 2015:

- a. Five (5) violations for Ammonia Nitrogen; and
- b. Two (2) violations for Fecal Coliform Bacteria.

14. Each of the seven (7) discharge limitation violations listed in Paragraph 13 above constitutes a separate violation for a total of seven (7) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

15. On April 7, 2016, the Department received a response to the February 16, 2016, inspection from Respondent. In the response, Respondent provided photographs documenting the repair of the damaged slab and manhole cover that had resulted in the unpermitted discharge. Sample results included with the response indicated that the effluent was within permit discharge limits.

16. On December 30, 2016, Respondent submitted a Corrective Action Plan (CAP) for installing a new wastewater treatment plant. The CAP included a final compliance date of November 30, 2017.

17. On January 5, 2017, a letter was sent from the Department approving the CAP submitted by Respondent on December 30, 2016.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall implement the approved CAP in accordance with the milestone schedule contained in the CAP submitted on December 30, 2016. The approved CAP and milestone schedule shall be fully enforceable as terms of this Order.
2. On or before January 31, 2018, Respondent shall submit a letter from a P.E. registered in the state of Arkansas certifying that all of the corrective actions listed in the

CAP submitted on December 30, 2016, have been completed and the facility is in full compliance with the Permit and can remain in compliance on a consistent basis.

3. Respondent shall submit to the Department, quarterly progress reports. The reports shall detail the corrective actions that have been completed during the last quarter and the corrective actions Respondent anticipates will take place during the next quarter. The first progress report will be due to the Department thirty (30) days from the effective date of this Order. A subsequent report will be due every three months until this Order is closed. All submittals shall be sent to:

ADEQ, Water Enforcement Branch
5301 Northshore Drive
North Little Rock, AR 7211

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). 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.

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 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.

7. 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.

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. 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 28th DAY OF March, 2017.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Happy Mart, Inc.

BY: Eun H Parkyi
(Signature)

EUN H PARKYI
(Typed or printed name)

TITLE: OWNER

DATE: 3/10/17