

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Rafael Rivera
4402 Highway 64 East
Alma, AR 72927

LIS No. 19- 034
Permit Tracking No. ARG550583
AFIN 58-00881

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 Rafael Rivera (“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 an individual treatment system (“site”) located at 32 Field Street, Russellville, Pope County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Prairie Creek, thence to Dardanelle Lake, thence to Arkansas River.
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) provides:

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102 , of any of the waters of this state;

(2) Place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state;

(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), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

9. ADEQ regulates domestic waste discharges pursuant to the NPDES Individual Treatment Systems for Domestic Waste General Permit, Permit Number ARG550000, which became effective July 1, 2014 and expires on June 30, 2019.

10. On June 21, 2017, in response to a complaint, the Department conducted a reconnaissance inspection of the site. The inspection revealed the following violations:

- a. Respondent was discharging domestic wastewater through an unpermitted wastewater treatment system into waters of the State. This is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On June 29, 2017, the Department notified Respondent of the inspection results, stating a response was due to the Department by July 13, 2017.

12. On August 1, 2017, Brister Law Firm, PLLC, on behalf of Respondent, submitted a response to the inspection conducted on June 21, 2017. The response stated a permit application would be submitted by September 1, 2017.

13. On January 4, 2018, Respondent submitted an incomplete Notice of Intent (NOI). The NOI failed to name a licensed Class II Operator and correct outfall coordinates.

14. On June 19, 2018, the Department mailed a certified letter requesting a complete NOI be submitted within fourteen (14) days and for Respondent to cease discharges from the site.

15. On September 28, 2018, the Department notified Respondent that a complete NOI must be submitted within fourteen (14) days from the date of the letter or the application will be put in an inactive status. The Department did not receive the requested information within fourteen (14) days and therefore the application was put in an inactive status.

16. On October 23, 2018, the Department conducted a reconnaissance inspection. The inspection revealed the following violation:

- a. Respondent was discharging domestic wastewater through an unpermitted wastewater treatment system into waters of the State. This is a violation of Ark.

Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On January 24, 2019, Respondent submitted a complete NOI.

18. ADEQ issued Individual Treatment Systems General Permit coverage to Respondent for discharge of treated domestic wastewater into waters of the state pursuant to the NPDES Individual Treatment Systems General Permit, Permit Tracking Number ARG550583 ("Permit") with a coverage date of February 14, 2019, and an expiration date of June 30, 2019.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall immediately comply with the Permit.
2. Respondent shall submit recertification for this Permit no later than May 31, 2019.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) of which THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100.00) shall be conditionally suspended by ADEQ. Payment of FIVE HUNDRED DOLLARS (\$500.00) is to be paid in five (5) consecutive payments of ONE HUNDRED DOLLARS (\$100.00). The first payment is due within thirty (30) calendar days after the effective date of this Order. Each subsequent monthly payment is due on or before the thirtieth (30th) day each month until the civil penalty is paid in full. This civil penalty offer of FIVE HUNDRED DOLLARS (\$500.00) is contingent upon Respondent complying with the terms and conditions of Paragraphs 1 through 3 in the Order and Agreement portion of this Order. In the event Respondent fails to comply fully with the terms and conditions of Paragraphs 1 through 3 in the Order and Agreement portion of this Order, or fails to make a timely, monthly payment, the civil penalty amount will revert back to the original, full amount of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00),

which will be due and payable immediately to:

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 16 DAY OF April, 2019.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Rafael Rivera

BY: Rafael Rivera
(Signature)

RAFAEL Rivera
(Typed or printed name)

TITLE: _____

DATE: 4/5/2019