

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

VPG Partners II, LLC
d/b/a Statue Road Inn
909 Passion Play Road
Eureka Springs, AR 72632

LIS No. 17-080
Permit No. AR0044300 (EXPIRED)
AFIN 08-00029

NOTICE OF VIOLATION

TO: Gill Elrod Ragon Owen & Sherman
Registered Agent
425 West Capitol Ave, Suite 3801
Little Rock, AR 72201

Thomas Newman, VP Management Services
Summer Winds Resort Services, LLC
3179 N. Gretna Road
Branson, MO 65616

Joseph P. Joyce, Managing Member
VPG Partners II, LLC
3179 N. Gretna Road
Branson, MO 65616

James T. Nangle, Director of Hospitality Services
VPG Partners II, LLC
3179 N. Gretna Road
Branson, MO 65616

NOTICE is hereby given that the Director of the Arkansas Department of Environmental Quality (ADEQ or "Department") has determined that there are reasonable grounds to believe that VPG Partners II, LLC, ("Respondent") has committed the following violations of the Arkansas Water and Air Pollution Control Act ("the Act"), Ark. Code Ann. § 8-4-101 *et seq.*, and the regulations promulgated thereunder.

This Notice of Violation (NOV) is issued in accordance with the provisions of the APC&EC Regulation 7: Civil Penalties and APC&EC Regulation 8: Administrative Procedures.

ALLEGATIONS AND PROPOSED FINDINGS OF FACT

1. Respondent operates the Statue Road Inn ("facility"), a motel located at 909 Passion Play Road, Eureka Springs, Carroll County, Arkansas 72632.
2. The facility is subject to regulation pursuant to the National Pollutant Discharge Elimination System (NPDES).
3. NPDES Permit Number AR0044300 ("Permit") was issued to the Respondent on July 1, 2011. The Permit became effective on August 1, 2011, and expired on July 31, 2016.
4. 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].
5. 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.
6. 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."
7. Ark. Code Ann. § 8-4-217(b)(1)(C) 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:
...
 - (C) To construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of

any wastes into the waters of this state or would otherwise alter the physical, chemical, or biological properties of any waters of this state in any manner not already lawfully authorized.

8. On March 31, 2016, an ADEQ Office of Water Quality Field Inspector conducted a compliance evaluation inspection of the facility. The Inspection Report for March 31, 2016, is attached as Exhibit 1. The inspection revealed the following violations:

- a. Respondent is not conducting effluent monitoring. This violates Part I, Section A of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent does not have a licensed Class II Wastewater Operator at the facility. This violates Part II, Paragraph 1 of the Permit and APC&EC Regulation No. 3.501 and therefore Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent has not implemented Best Management Practices at the facility to prevent or reduce the pollution of the waters of the state. During the inspection, a leak was observed in the pipes connecting the aeration cell to the recirculation tank that resulted in a discharge of untreated wastewater. This violates Part II, Paragraph 4 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- d. Respondent is not properly operating and maintaining all elements of the treatment system. This violates Part III, Section B, Paragraph 1 of the Permit and therefore Ark. Code Ann. § 8-4-

217(a)(3). Specifically, the following items were observed and noted during the inspection :

- i. A leaking pipe connecting the aeration cell to the recirculating tank;
 - ii. Damaged and exposed pipe leading from the recirculation tank to the splitter box;
 - iii. Overgrown vegetation in the intermittent sand filters; and
 - iv. Chlorination and dechlorinating tanks were not in operation.
- e. Respondent was unable to provide access to records that must be kept under the conditions of the Permit. This violates Part III, Section C, Paragraph 9 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- f. Respondent was unable to provide records of all monitoring information for the last 3 years. This violates Part III, Section C, Paragraphs 7 and 9 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).
- g. Respondent did not apply for a new permit at least 180 days before the expiration date of the Permit. Part III, Section D, Paragraph 10 of the Permit requires the Respondent to submit a renewal application at least 180 days before the expiration date of the Permit if they wish to continue discharging. The final date to submit a renewal application was February 2, 2016. ADEQ notified Respondent via letter dated July 28, 2015, and again by letter dated November 2, 2015, that a renewal application must be

submitted at least 180 days prior to the expiration date of the Permit. To date, a complete application has not been received. This violates Part III, Section D, Paragraph 10 of the Permit and therefore Ark. Code Ann. § 8-4-217(a)(3).

9. On April 19, 2016, the Department notified Respondent via letter of the inspection results. The April 19, 2016 letter is attached as Exhibit 1. On June 28, 2016, the Department notified Respondent of the inspection results via email. On June 29, 2016, Respondent partially responded to the inspection report items via email. Department email and Respondent responses are attached as Exhibit 2.

10. On August 11, 2016, ADEQ sent a letter via U.S.P.S. certified mail to Respondent notifying Respondent that the Permit expired on July 31, 2016. ADEQ Letter and U.S.P.S. tracking are attached as Exhibit 3.

11. On August 16, 2016, ADEQ sent an email to Respondent. ADEQ again notified Respondent that operating the facility is a violation of Ark. Code Ann. §§ 8-4-217(b)(1)(C) and 8-4-217(a)(3). ADEQ requested that Respondent submit a complete application for an individual NPDES permit as soon as possible.

12. On September 13, 2016, the ADEQ Office of Water Quality Compliance Branch Manager conducted a reconnaissance inspection at the request of the Office of Water Quality Enforcement Branch. The Inspection Report for September 13, 2016, is attached as Exhibit 4.

The results were as follows:

- a. Respondent is operating the facility without a permit. The Permit expired on July 31, 2016. The facility is operating without a permit in violation of the Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, APC&EC Reg. 6.106(C), and Ark. Code Ann. § 8-4-217(b)(1)(C).

13. On October 12, 2016, the Department and Respondent met at the North Little Rock ADEQ office to discuss the expired Permit and the ongoing compliance issues at the facility. Respondent stated that it would submit the new permit information to the engineering branch as soon as possible. To date, ADEQ has not received a new permit application from Respondent.

14. ADEQ received a Monthly Operation and Maintenance Report, dated February 13, 2017, for the facility for January 2017. Ozarks Environmental Services prepared the report and included the plant operating records in the submission. The plant operating records indicated that "MS" performed the operator duties.

15. ADEQ received a Monthly Operation and Maintenance Report, dated March 6, 2017, for the facility for February 2017. Ozarks Environmental Services prepared the report and included the plant operating records in the submission. The plant operating records indicated that "MS" performed the operator duties.

16. ADEQ received a Monthly Operation and Maintenance Report, dated April 12, 2017, for the facility for March 2017. Ozarks Environmental Services prepared the report and included the plant operating records in the submission. The plant operating records indicated that "MS" performed the operator duties.

17. On July 11, 2017, the ADEQ Office of Water Quality Compliance Branch Manager conducted a reconnaissance inspection at the facility. The July 11, 2017 Inspection Report is attached as Exhibit 5. The results were as follows:

- a. Respondent is operating the facility without a permit. The Permit expired on July 31, 2016. The facility is operating without a permit in violation of the Clean Water Act, 33 U.S.C. § 1311(a) *et seq.*, APC&EC Reg. 6.106(C), and Ark. Code Ann. § 8-4-217(b)(1)(C).

18. On July 19, 2017, ADEQ received an email from Ozarks Environmental Services stating that the operators for the facility were Mike Swofford and Steve Harp. Neither Mike Swofford nor Steve Harp are duly licensed by ADEQ to operate a public or private wastewater treatment plant. This is a violation of APC&EC Reg. 3.501 and Ark. Code Ann. § 8-5-203, which states that it shall be unlawful for any person to perform the duties of an operator of any public or private wastewater treatment plant without being duly licensed under this subchapter. The email from Ozarks Environmental Services is attached as Exhibit 6.

PROPOSED CIVIL PENALTY ASSESSMENT AND ORDER

1. Respondent shall immediately cease operation of the facility until an NPDES permit is issued by ADEQ.
2. Respondent shall immediately cease all unpermitted discharges of effluent until an NPDES permit is issued by ADEQ.
3. Respondent is assessed a proposed civil penalty for each violation of the Allegations and Proposed Findings of Fact as follows:
 - a. For violations specified in Paragraph 8(a), Respondent shall pay a penalty in the amount of One Thousand Six Hundred Dollars (\$1,600.00).
 - b. For violations specified in Paragraph 8(b), Respondent shall pay a penalty in the amount of One Thousand Six Hundred Dollars (\$1,600.00).
 - c. For violations specified in Paragraphs 8(c) and (d)(i)-(iv), Respondent shall pay a penalty in the amount of Five Thousand Six Hundred Dollars (\$5,600.00).
 - d. For violations specified in Paragraphs 8(e) and (f), Respondent shall pay a penalty in the amount of Seven Hundred Dollars (\$700.00).
 - e. For violations specified in Paragraphs 8(g), Respondent shall pay a penalty in the

amount of One Thousand Eight Hundred Dollars (\$1,800.00).

f. For violations specified in Paragraphs 12(a) and 17(a), Respondent shall pay a penalty in the amount of Three Thousand Six Hundred Dollars (\$3,600.00).

g. For violations specified in Paragraph 18, Respondent shall pay a penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00).

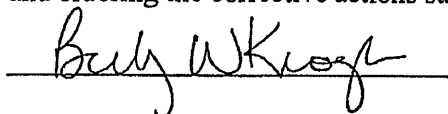
4. In determining the amount of civil penalties assessed, ADEQ considered pertinent factors pursuant to and consistent with Section 9 of APC&EC Regulation No. 7 and the ADEQ Uniform Penalty Policy. Therefore, pursuant to Ark. Code Ann § 8-4-103, the total sum of civil penalties assessed to Respondent is SIXTEEN THOUSAND FOUR HUNDRED DOLLARS (\$16,400.00). Payment shall be due within thirty (30) calendar days of the effective date of the final Order in this matter, 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, Arkansas 72118-5317

5. Nothing contained in the final order entered in this matter shall be construed as a waiver of ADEQ's enforcement authority over violations not specifically addressed herein, nor does this NOV exonerate past, present, or future conduct which is not expressly addressed herein. Nothing contained herein or the final order entered in this matter shall relieve Respondent of any other obligations imposed by any local, state, or federal laws, nor shall the final order entered in this matter be deemed in any way to relieve Respondent of its responsibilities for obtaining or complying with any necessary permits or licenses.

THEREFORE TAKE NOTICE THAT:

If Respondent wishes to dispute the allegations and proposed findings of fact, or the proposed civil penalty assessment, Respondent must file a written request for a hearing in accordance with APC&EC Regulation 8 with the Secretary of the Arkansas Pollution Control and Ecology Commission, 101 East Capitol, Suite 205, Little Rock, Arkansas 72201 within **twenty (20) calendar days** of receipt of this Notice of Violation or these allegations will be deemed proven. Upon timely filing a written response that is compliant with APC&EC Regulation 8, Respondent will be entitled to an adjudicatory hearing upon the allegations, proposed civil penalties, and other matters stated in this Notice of Violation. If no timely request for a hearing is filed with the Secretary of the APC&EC, the Director may issue an Administrative Order confirming the allegations as Findings of Fact, assessing civil penalties, and ordering the corrective actions stated herein.



**BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY**

DATE: 10 | 5 | 2017