

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Wabbaseka
114 South 1st Street
Wabbaseka, AR 72175

LIS No. ~~20~~ 21-023
Permit No. AR0039896
AFIN 35-00180

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 rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of the City of Wabbaseka (Respondent) and the Division of Environmental Quality¹ (DEQ), 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 municipal wastewater treatment plant (“facility”) located approximately 1.5 miles southwest of Wabbaseka, along Blue Rock Road, Wabbaseka, Jefferson County, Arkansas.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Department of Energy and Environment.

2. Respondent discharges treated wastewater to Lateral No. 2, thence to Bradley Slough, thence to Boggy Bayou, thence to Wabbaseka Bayou, thence to the Arkansas River in Segment 3A 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. DEQ is authorized under the Arkansas Water and Air Pollution Control Act (“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 or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].
7. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ 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 rule 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.”

Permit Expiration

9. DEQ issued NPDES Permit Number AR0039896 ("Permit") to Respondent on March 29, 2016. The Permit became effective on April 1, 2016, and expires on March 31, 2021.
10. Part III, Section D, Condition 10 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.
11. Respondent intends to operate this facility beyond the expiration date of the current permit, March 31, 2021.
12. On April 1, 2020, April 2, 2020, and July 2, 2020, Respondent was notified that the Permit would expire on March 31, 2021, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than October 2, 2020.
13. On July 21, 2020, DEQ and Respondent met via Zoom to discuss the permit expiration, missing Discharge Monitoring Reports (DMRs), and overdue invoices.
14. On October 14, 2020, DEQ contacted Respondent via telephone about their failure to submit the permit renewal application by October 2, 2020.
15. To date, Respondent has not submitted a complete permit renewal application to DEQ.
16. The complete Permit renewal application was not received by October 2, 2020. Failure to submit the Permit renewal application by October 2, 2020, is a violation of Part III, Section D, Condition 10 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

DMRs

17. On December 6, 2017, January 25, 2019, February 8, 2019, May 24, 2019, May 31, 2019, July 12, 2019, August 7, 2019, August 29, 2019, November 26, 2019, December 11, 2019,

February 6, 2020, July 21, 2020, and October 14, 2020, DEQ notified Respondent of the missing DMRs at that time and requested that Respondent submit the missing DMRs to DEQ.

18. On October 12, 2019, Respondent notified DEQ that Environmental Services Company would not release the DMR data until the outstanding balance owed to them was paid.

19. On October 28, 2020, DEQ conducted a review of certified DMRs) submitted by Respondent in accordance with the Permit. The review revealed that DMRs for the following monitoring period end dates for the following years have not been submitted:

- a. 2016: April 30, 2016; May 31, 2016; June 30, 2016; and August 31, 2016;
- b. 2018: July 31, 2018; August 31, 2018; September 30, 2018; October 31, 2018; November 30, 2018; and December 31, 2018;
- c. 2019: January 31, 2019; February 28, 2019; March 31, 2019; April 30, 2019; May 31, 2019; June 30, 2019; July 31, 2019; August 31, 2019; September 30, 2019; October 31, 2019; November 30, 2019; and December 31, 2019; and
- d. 2020: January 31, 2020; February 29, 2020; March 31, 2020; April 30, 2020; May 31, 2020; June 30, 2020; July 31, 2020; August 31, 2020; and September 30, 2020.

Part III, Section C, Condition 5 of the Permit requires Respondent to submit DMRs to DEQ by the 25th of the month following the monitoring period end date. Each of the thirty-two (32) reporting violations listed above constitutes a separate Permit violation for a total of thirty-two (32) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

Failure to Pay Annual Permit Fees

20. DEQ is authorized by Ark. Code Ann. § 8-1-103 to charge fees for issuance, modification, and annual review of permits.

21. APC&EC Rule 9.301(D) provides that:

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division, which may result in revocation of the permit.

22. On September 1, 2020, DEQ issued invoice number PDS-183132 for annual fees for NPDES Permit Number AR0039896 with the amount due of Seven Hundred Sixty dollars (\$760.00). Respondent paid Three Hundred Eighty dollars (\$380.00) of the full invoiced amount. Respondent failed to make the complete payment of the annual fee for NPDES Permit Number AR0039896. Failure to comply with all applicable permit fee requirements is a violation of Part III, Section A, Condition 11 of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a complete Permit renewal application to the Division.
2. Respondent shall comply with the existing Permit until the effective date of the permit renewal.
3. On or before the effective date of this Order, Respondent shall submit the missing DMRs referenced in the Findings of Fact and any subsequent DMRs that have become due and have not yet been submitted.
4. Respondent shall submit all DMRs in accordance with Part III, Section C, Condition 5 of the Permit.

5. On or before the effective date of this Order, Respondent shall pay the remaining balance of invoice PDS-183132 in the amount of Three Hundred Eighty dollars (\$380.00). The total amount shall be made payable to the Division of Environmental Quality and mailed to:

DEQ, Fiscal Division
PDS-183132
5301 Northshore Drive
North Little Rock, AR 72118-5317

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Six Hundred Fifty Dollars (\$8650.00), of which Seven Thousand Six Hundred Fifty Dollars (\$7650.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Seven Thousand Six Hundred Fifty Dollars (\$7650.00) shall be DISMISSED by DEQ. The suspension and dismissal of civil penalties is contingent upon Respondent complying with the terms of this Order. If Respondent violates any term of this Order, the full balance of Eight Thousand Six Hundred Fifty Dollars (\$8650.00) shall become due and payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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 Division of Environmental Quality, and mailed to the attention of:

DEQ, 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, DEQ shall be entitled to attorneys' fees and costs of collection.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent

consents and agrees to pay on demand to DEQ 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 DEQ by reason of failure by Respondent to comply with the requirements of this Order.

8. 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 DEQ, 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.

9. DEQ 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 DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

11. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) 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 Rule 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.

12. Nothing in this Order shall be construed as a waiver by DEQ 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.

13. This Order has been reviewed and approved by the City Council of Respondent in a duly convened meeting with a quorum present. See copy of [meeting minutes or resolution] attached as Exhibit A.

14. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit A.

15. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 18 DAY OF March, 2020.


BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

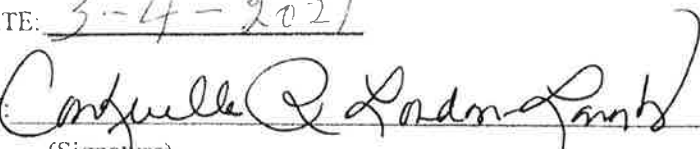
City of Wabbaseka

BY: 
(Signature)

LINZIE ANDERSON
(Typed or printed name)

TITLE: MAYOR

DATE: 3-4-2021

BY: 
(Signature)

CONSUELLA R. LONDON-LAMB
(Typed or printed name)

TITLE: TOWN RECORDER/TREASURER

DATE: 03/04/2021

RESOLUTION NO 003 - 2021

A RESOLUTION AUTHORIZING THE MAYOR AND TOWN RECORDER OF WABBASEKA, ARKANSAS, TO EXECUTE A CONSENT ADMINISTRATIVE ORDER TO RESOLVE MATTERS WITH THE ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY, PERTAINING TO THE WABBASEKA WASTEWATER TREATMENT PLANT AND RELATED MATTERS.

WHEREAS, the Town of Wabbaseka, Arkansas (hereinafter, the "Town"), operates a municipal wastewater treatment plant ("facility"); and

WHEREAS, the Arkansas Department of Energy and Environment, Division of Environmental Quality ("ADEQ"), issued a permit to the Town pursuant to the federal Clean Water Act and related laws; and

WHEREAS, ADEQ has made findings of violations as more specifically stated in the proposed Consent Administrative Order (CAO), a copy of which has been presented to the Mayor and Town Council; and

WHEREAS, the CAO contains an agreement for settlement of the issues pertaining to the violations and, among other matters, includes required payments by the Town of permit fees; a civil penalty of \$8,650.00 of which \$7,650.00 shall be conditionally suspended so long as the Town complies with the terms of the CAO; and stipulated daily penalties in the event of further noncompliance; and

WHEREAS, the Town Council has reviewed the CAO, with assistance of and review by the Town's legal counsel, and finds that approving the CAO is in the best interest of the Town and its inhabitants as a fair resolution of the pending matters pertaining to the facility;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WABBASEKA, ARKANSAS, THAT:

Section 1. The above-described Consent Administrative Order is hereby approved in substantially the same form as presented. The Mayor and Town Recorder/Treasurer are hereby authorized and directed to sign said Order on behalf of the Town of Wabbaseka, Arkansas. Execution of said Order shall be considered conclusive evidence of the Town Council's approval of any insertions, omissions, or changes approved by the Town Attorney or Mayor. Upon execution, a copy of said Order shall be kept in the Town's records.

Section 2. The Mayor and Town Recorder/Treasurer are hereby authorized and directed to expend funds for compliance activities required by the above-described Consent Agreement Order, including, but not limited to, payment of the civil penalty set forth therein.

PASSED AND APPROVED in regular session this 4th day of March, 2021.

Approved By:


Linzie Anderson
Mayor

Attest:


Consuella R. London-Lamb
Town Recorder/Treasurer

CERTIFICATION

I, the undersigned Town Recorder for the Town of Wabaseka, Arkansas, hereby certify that the above Resolution is a true and correct copy of existing Resolution No. 03-2021 of the Town of Wabaseka, Arkansas, which was passed and approved on March 4, 2021, by a unanimous / majority (*circle one*) vote of the Town Council at a duly-called meeting in regular session at which a quorum was present.

(SEAL)

Consuella R. London-Lamb

Consuella R. London-Lamb
Wabaseka Town Recorder

Date: March 4, 2021