

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Salesville
46 Gillispie Street
Salesville, AR 72653

LIS No. 21- **033**
Permit No. 5079-WR-1
AFIN 03-00435

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 Salesville (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 decentralized wastewater treatment system with drip irrigation dispersal (“facility”) located at 10529 Highway 5 South, Salesville, Baxter County, Arkansas.
2. DEQ is authorized under the Ark. Code Ann. § 8-4-101 *et seq.*, and APC&EC Rule 17 Arkansas Underground Injection Control (UIC) Code to issue permits for wastewater treatment systems that include drip irrigation dispersal fields.

a. Ark. Code Ann. § 8-4-217(a)(3) provides:

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.

(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].

3. 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.

4. 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.”

5. DEQ issued State No-Discharge Permit 5079-WR-1 (“Permit”) to Respondent on August 12, 2015. The Permit became effective on September 1, 2015, and expired on August 31, 2020.

6. On August 28, 2019, DEQ sent Respondent a request for a Corrective Action Plan (CAP) to address the permitted effluent discharge limitations and Sanitary Sewer Overflows reported by Respondent in accordance with the Permit. The CAP was to have a milestone schedule, final date of compliance and be certified by a Professional Engineer (P.E) licensed in the state of Arkansas.

7. On October 21, 2019, DEQ received a Permit renewal application from Respondent.. The Permit renewal application was deemed complete on May 1, 2020, and Respondent’s coverage was administratively continued pursuant to APC&EC Reg. 6.201.

On October 10, 2019, Respondent submitted a CAP to DEQ with a final date of compliance of June 30, 2020.

8. On September 4, 2020, Respondent submitted a revised CAP with an updated milestone schedule to address the effluent violations. The CAP had a final date of compliance of June 30, 2022.

9. On September 30, 2020, DEQ conducted a review of certified Monthly Monitoring Reports (MMRs) submitted by Respondent in accordance with the Permit.

10. The review revealed that Respondent reported the following violations of the permitted effluent limits detailed in Part I of the Permit from May 1, 2017 through August 31, 2020:

- a. Twenty (20) violations of Total Suspended Solids;
- b. Nine (9) violations of Carbonaceous Biochemical Oxygen Demand; and
- c. One (1) violation of Fecal Coliform Bacteria.

11. Each of the thirty (30) effluent limit violations listed in Paragraph 11 above constitutes a separate permit violation for a total of thirty (30) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

12. On October 9, 2020, DEQ conducted a review of Sanitary Sewer Overflows (SSOs) reported by Respondent in accordance with the Permit. The review revealed that Respondent reported sixteen (16) SSOs from May 1, 2017 through September 30, 2020.

13. Respondent is permitted to land apply treated municipal wastewater via a drip irrigation system from its facility. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

14. On October 13, 2020, DEQ sent Respondent a letter approving the revised CAP submitted on September 4, 2020.

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 revised CAP submitted on September 4, 2020. The approved CAP, milestone schedule, and final compliance date of June 30, 2022, shall be fully enforceable as terms of this Order.
2. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each quarter thereafter for a period lasting until this Order is closed, Respondent shall submit quarterly progress reports detailing the progress that has been made towards compliance with the final permitted effluent limits and eliminating SSOs. Respondent shall submit the final compliance report by June 30, 2022.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Two Thousand Eight Hundred Dollars (\$2800.00), of which Two Thousand Three Hundred Dollars (\$2300.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Two Thousand Three Hundred Dollars (\$2300.00) 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 Two Thousand Eight Hundred Dollars (\$2800.00) shall become due and payable immediately to DEQ. Payment of the civil penalty in the amount of Five Hundred Dollars (\$500.00) 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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 22 DAY OF April, 2021.

Becky W Keogh
BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

City of Salesville

BY: [Signature]
(Signature)

Tim D. Mayfield
(Typed or printed name)

TITLE: Mayor

DATE: 3/30/2021

**CITY OF SALESVILLE
BAXTER COUNTY, ARKANSAS
RESOLUTION NUMBER 113**

**A RESOLUTION ACCEPTING CONSENT ADMINISTRATIVE ORDER FOR THE CITY OF
SALESVILLE, ARKANSAS**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALESVILLE,
ARKANSAS, that:**

SECTION 1: The attached Division of Environmental Quality Consent Administrative Order is hereby approved and the Mayor and Recorder/Treasurer are authorized to sign the Order on behalf of the City.

SECTION 2: The Mayor and Recorder/Treasurer are authorized to expend funds in the amount of \$500.00 as payment for the civil penalty required by the Consent Administrative Order.

PASSED AND APPROVED THIS 30TH DAY OF MARCH 2021.



APPROVED:



Tim D. Mayfield, Mayor

ATTEST:



Kendra Spencer, Recorder/Treasurer