

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Eagle Ridge Utility Operating Company, LLC
Huntington Estates Subdivision
P.O. Box 179122
St. Louis, MO 63179

LIS No. 21- 068
Permit No. AR0050598
AFIN 23-00888

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

The issues herein having been settled by the agreement of the Eagle Ridge Utility Operating Company, LLC (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 domestic wastewater treatment plant (“facility”) located on Elliot Road, Springhill, Faulkner 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 Kaney Creek, thence to East Fork of Cadron Creek, thence to Cadron Creek, thence to the Arkansas River in Segment 3D 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.”

9. DEQ issued NPDES Permit Number AR0050598 ("Permit") for Respondent's facility on January 25, 2017. The Permit became effective on February 1, 2017, and expires on January 31, 2022.
10. On January 9, 2018, Waste Water Management, Inc., the previous owner of the facility, submitted a Corrective Action Plan (CAP) to address violations of the permitted effluent limitations.
11. On August 29, 2018, Respondent acquired the facility from Waste Water Management, Inc.
12. On November 30, 2018, Respondent submitted a permit transfer form to DEQ to transfer the permit for the facility from Waste Water Management, Inc. to Respondent.
13. On January 4, 2019, DEQ issued a Permit modification to Respondent. The Permit modification became effective on February 1, 2019, and expires on January 31, 2022.
14. On January 5, 2019, DEQ notified Respondent that the Permit had been transferred to Respondent.
15. On February 1, 2019, Respondent submitted an Amended CAP to DEQ.
16. On February 19, 2019, DEQ sent Respondent a letter approving the Amended CAP submitted on February 1, 2019, and requested quarterly progress reports be submitted.
17. On May 29, 2019, and November 29, 2019, Respondent submitted progress reports detailing the corrective actions being taken to achieve final compliance.
18. On January 16, 2020, DEQ sent Respondent a letter requesting additional information concerning the number and type of sewer connections to the facility, as-built treatment capacity of the facility, design capacity of the facility, and a timeline for submission of the complete construction application for the proposed facility modifications.

19. On January 27, 2020, DEQ and Respondent met to discuss the information requested.
20. On February 14, 2020, Respondent submitted information concerning the number and type of sewer connections to the facility, as-built treatment capacity of the facility, design capacity of the facility, and a timeline for submission of the complete construction application for the proposed facility modifications.
21. On February 25, 2020, DEQ sent a response letter to the February 14, 2020 submission, requesting a Pilot Study.
22. On February 27, 2020, Respondent submitted a progress report detailing the corrective actions being taken to achieve final compliance.
23. On March 4, 2020, Respondent submitted a response to DEQ's letter dated February 25, 2020.
24. On May 5, 2020, Respondent submitted a state construction permit application to DEQ.
25. On May 7, 2020, Respondent submitted an updated state construction permit application with the additional information that DEQ requested.
26. On May 20, 2020, DEQ notified Respondent via certified letter that the state construction permit application was deemed administratively complete.
27. On August 13, 2020, DEQ issued a Permit modification to Respondent. The Permit modification became effective on July 1, 2020, and expires on January 31, 2022.
28. On September 1, 2020, December 1, 2020, and February 26, 2021, Respondent submitted progress reports detailing the corrective actions being taken to achieve final compliance.
29. On February 4, 2021, DEQ notified Respondent via letter of the preliminary NPDES discharge limits.

Discharge Monitoring Reports Review

30. On April 26, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

31. 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 February 1, 2018, through March 31, 2021:

- a. Ninety-eight (98) violations of Ammonia Nitrogen;
- b. Forty-five (45) violations of Fecal Coliform Bacteria;
- c. Forty-one (41) violations of Total Suspended Solids;
- d. Forty (40) violations of Carbonaceous Biochemical Oxygen Demand;
- e. Thirteen (13) violations of Oil & Grease; and
- f. Five (5) violations of Dissolved Oxygen.

32. Each of the 242 discharge limitation violations listed in Paragraph 31 above constitutes a separate permit violation for a total of 242 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

33. The review of the DMRs also revealed that Respondent failed to conduct sample analysis for Oil & Grease during the following monitoring periods:

- a. September 2018;
- b. October 2018;
- c. November 2018; and
- d. December 2018.

34. Each of the four (4) failures to conduct sample analysis listed in Paragraph 33 above constitutes a separate violation of Part I, Section A of the Permit for a total of four (4) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

Request for Capacity Increase

35. On December 30, 2020, Respondent submitted a request to DEQ to increase the treatment capacity of the facility.

36. Pursuant to Ark. Code Ann. § 8-4-203(b)(4)(B)(ii)(a), DEQ “shall require an initial trust fund contribution fee for each construction permit... resulting in an increase in design treatment capacity.”

37. Pursuant to Ark. Code Ann. § 8-4-203(b)(4)(B)(ii)(d), DEQ shall reduce the required initial trust fund contribution fee if:

- (1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and
- (2) The corrective actions approved by the division would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

38. Respondent’s proposed corrective actions include an increase that would require it to make an initial trust fund contribution.

39. On March 4, 2021, Respondent submitted an estimate of the cost to increase the design treatment capacity of the facility as part of its corrective actions.

40. On March 17, 2021, DEQ requested additional information concerning the estimate of the cost to increase the design treatment capacity of the facility.

41. On April 6, 2021, Respondent provided the requested information and an updated estimate of the cost to increase the design treatment capacity of the facility as part of its corrective actions.

42. On May 25, 2021, DEQ approved a reduced initial trust fund contribution based on Respondent's updated estimate of the cost for specific items that would result in an increase in the design treatment capacity of the facility.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 13-169 shall be closed.
2. DEQ approves Respondent's request to increase the design treatment capacity of the facility as part of its corrective actions.
3. Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to DEQ, for review and approval, a Revised CAP (RCAP) developed by a Professional Engineer licensed in the state of Arkansas. The RCAP shall include, at minimum the methods and best available technologies that will be used to correct the violations listed in Findings of Fact and prevent future violations and include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved RCAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.
4. 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 limitations set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report no later than the final compliance date.

5. Respondent shall submit an interim operating plan within thirty (30) days of the effective date of this Order that describes, in detail, the operational measures that will be undertaken to maximize the removal efficiency consistently of all pollutants covered by this permit. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00), or one-half of the full civil penalty of Four Thousand Two Hundred Dollars (\$4200.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment is due within thirty (30) calendar days of the effective date of this Order. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

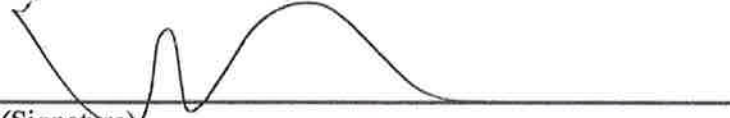
14. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member 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 22 DAY OF July, 2021.


BECKY W. KEOGH, DIRECTOR

APPROVED AS TO FORM AND CONTENT:

Eagle Ridge Utility Operating Company, LLC

BY: 
(Signature)

JOSIAH COX
(Typed or printed name)

TITLE: PRESIDENT

DATE: 7/12/21