

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Lepanto
P.O. Box 610
Lepanto, AR 72354

LIS No. 21- 093
Permit Number AR0023841
AFIN 56-00056

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 City of Lepanto (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 on State Highway 135, Lepanto, Poinsett County, Arkansas.
2. Respondent discharges treated wastewater to the Left Hand Chute of the Little River, and thence to the St. Francis River in Segment 5C of the St. Francis River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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.

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 AR0023841 (“Permit”) to Respondent on September 15, 2016. The Permit became effective on November 1, 2016, and expires on October 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, October 31, 2021.

12. On November 5, 2020, and February 10, 2021, Respondent was notified that the Permit would expire on October 31, 2021, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2021.

On May 5, 2021, Respondent submitted a Permit renewal application to DEQ. On May 17, 2021, DEQ notified Respondent that the application was incomplete. The incomplete application submitted on May 5, 2021, was missing the following information:

a) DEQ Form 1:

- i. A location map;
- ii. Design flow and highest monthly average flow from the past two (2) years;
- iii. Explanation for not having a backup generator; and
- iv. Explanation of what is done with solids at the facility.

b) EPA Form 2A:

- i. A topographic map that shows at least one (1) mile around the property boundary of the facility and marks the discharge location;
- ii. Sections 3.7 through Section 5 must be completed;
- iii. Tables A and B must be submitted with the required test results; and
- iv. Section 3.6 must be marked yes since this is a permit application for discharge to a water of the state.

13. On May 20, 2021, Respondent submitted a additional information to complete the permit renewal application. On June 4, 2021, DEQ notified Respondent that its permit renewal application was determined to be administratively complete on May 20, 2021.

14. The complete Permit renewal application was not received by May 4, 2021. Failure to submit the complete Permit renewal application by May 4, 2021, is a violation of Part III, Section D, Condition 10 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.
2. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1000.00), or one-half of the full civil penalty of Five Hundred Dollars (\$500.00) 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:

Division of Environmental Quality
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.

3. 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.

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 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.

5. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ 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 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.

7. 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.

8. 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.

9. 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.

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

11. 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 15 DAY OF SEPTEMBER, 2021.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Lepanto

BY:  

(Signature)

Earnie Hill Tamara Wyatt

(Typed or printed name)

TITLE: Mayor City Clerk

DATE: 08-30-2021

RESOLUTION NO. 21-02

RESOLUTION AUTHORIZING ENTRY OF A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY AND DIVISION OF ENVIRONMENTAL QUALITY FOR LATE FILING OF PERMIT RENEWAL APPLICATION AND FOR IMPOSITION OF CIVIL PENALTY

WHEREAS, the Arkansas Department of Energy and Environment Division of Environmental Quality (DEQ) has authority under state and federal legislation and related regulations to regulate the discharge of treated wastewater into natural waterways and to prohibit such except in compliance with a required permit for such;

WHEREAS, DEQ is further authorized under federal and state legislation and related regulations to issue permits and to initiate enforcement of an action for any violation thereon;

WHEREAS, the City's permit required the City to complete a permit renewal application at least 180-days prior to the expiration date of the permit if activity regulated by the permit is expected to continue beyond the expiration date; and

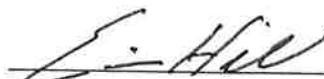
WHEREAS, the City has been notified by DEQ that it's permit application was late, and a civil penalty of \$500.00 has been proposed in settlement of the violation thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEPANTO, ARKANSAS, AS FOLLOWS:

1. That the proposed Consent Administrative Order, a copy of which is attached hereto and made a part hereof as Exhibit "A", issued by DEQ under authority granted by state and federal legislation pursuant to its enforcement capacity proposing imposition of a civil penalty of \$500.00 for late filing of the required renewal permit for operation of the City's wastewater plant is approved, and the Mayor and City Clerk are authorized to enter into such on behalf of the City, as well as to pay the required \$500.00 civil penalty, or any reduced amount in mitigation thereof.

PASSED AND ADOPTED this 30th day of August, 2021.

CITY OF LEPANTO:



Mayor

Attest:



City Clerk



A SPECIAL CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF LEPANTO, ARKANSAS WAS HELD ON MONDAY, AUGUST 30, 2021, AT 6 PM. ONCE A QUORUM HAD ASSEMBLED THE MEETING WAS CALLED TO ORDER AND THERE WAS FOUND TO BE PRESENT THE FOLLOWING:

MAYOR EARNIE HILL
CITY CLERK TAMARA WYATT
COUNCIL MEMBER GREG DELANCEY
COUNCIL MEMBER DANIEL VAUGHN
COUNCIL MEMBER DEREK KIRK
COUNCIL MEMBER MARVIN CAREY
COUNCIL MEMBER CHARLES MAHAN.

The City Clerk provided each council member with a copy of the CONSENT ADMINISTRATIVE ORDER (Exhibit A) from the Arkansas Department of Energy and Environment division of Environmental Quality. The Clerk explained to the council that our NPDES Permit was due no later than May 4, 2021 and our application renewal application was not received until May 5, 2021. On May 17, 2021 we were notified that the permit application was incomplete and additional information was needed to process the application. The Clerk stated that she has a Resolution that was prepared by Attorney Houston. At this time the Clerk read aloud a RESOLUTION AUTHORIZING ENTRY OF A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY AND DIVISION OF ENVIRONMENTAL QUALITY FOR LATE FILING OF PERMIT RENEWAL APPLICATION AND FOR IMPOSITION OF CIVIL PENALTY. Council Member Derek Kirk made a motion seconded by Council Member Daniel Vaughn to adopt the resolution; those voting yea: Council Members Greg Delancey, Marvin Carey and Charles Mahan.

With there being no further business to come before the council at this time with motion from Council Member Derek Kirk seconded by Council Member Marvin Carey the meeting was adjourned.



Tamara Wyatt, Clerk



Earnie Hill, Mayor

