

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Grand Prairie Bayou Two Public Water Authority  
Mt. Tabor Estates Wastewater Treatment Facility  
11177 Highway 31 North  
Austin, AR 72007

LIS No. 21- 096  
Permit No. AR0052299  
AFIN 43-000659

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 Grand Prairie Bayou Two Public Water Authority (Respondent) and the Division of Environmental Quality<sup>1</sup> (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 (“facility”) serving the Mount Tabor Estates subdivision located near Mount Tabor Road, Austin, Lonoke County, Arkansas.

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<sup>1</sup> 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 an unnamed tributary of Wattensaw Bayou, thence into Wattensaw Bayou, thence to the White River in Segment 4D of the White 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 AR0052299 (“Permit”) to Respondent on October 29, 2013. The Permit became effective on November 1, 2013, and expired on October 31, 2018.

10. DEQ issued a renewal of NPDES Permit Number AR0052299 (“Permit”) to Respondent on December 14, 2018. The Permit became effective on January 1, 2019, and expires on December 31, 2023.

11. On January 23, 2019, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

12. The review revealed that Respondent reported the following violations of the permitted effluent discharge limitations detailed in Part I, Section A of the Permit from January 1, 2016, through January 31, 2019:

- a. Two (2) violation of Total Suspended Solids;
- b. Ten (10) violations of Dissolved Oxygen;
- c. One (1) violation of Carbonaceous Biochemical Oxygen Demand;
- d. Three (3) violations of pH;
- e. Two (2) violations of Fecal Coliform Bacteria; and
- f. Twenty-four (24) violations of Ammonia Nitrogen.

13. Each of the Forty-two (42) discharge limitation violations listed in Paragraph 12 above constitutes a separate permit violation for a total of Forty-two (42) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

14. On January 23, 2019, DEQ emailed Respondent a letter requesting that a Corrective Action Plan (CAP) be submitted to DEQ by February 23, 2019. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

15. On May 6, 2019, DEQ received a CAP from Respondent’s engineer.

16. On May 22, 2019, DEQ notified Respondent by certified letter that the CAP submitted on May 6, 2019, was inadequate. DEQ requested a revised CAP be submitted within thirty (30) days of receipt of the letter. On June 22, 2019, DEQ received a CAP from Respondent's engineer.
17. On July 1, 2019, DEQ notified Respondent's engineer by email that the CAP submitted on June 22, 2019, was inadequate to address the effluent violations and requested a revised CAP be submitted by July 19, 2019.
18. On July 19, 2019, DEQ received a request for an extension of the CAP submission date to July 23, 2019. DEQ agreed to extend the submission date to July 23, 2019.
19. On December 8, 2020, DEQ conducted a review of the CAP file and certified DMRs submitted by Respondent in accordance with the Permit.
20. The review revealed that a revised CAP had not been submitted to DEQ by July 23, 2019.
21. The review also 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, 2019, through October 31, 2020:
  - a. Three (3) violations of Total Suspended Solids; and
  - b. Seventeen (17) violations of Ammonia Nitrogen.
22. Each of the Twenty (20) discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of Twenty (20) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
23. On December 8, 2020, DEQ emailed a request to Respondent for a CAP to be submitted by January 31, 2021.
24. On January 29, 2021, DEQ received a CAP from Respondent's newly contracted engineer. The CAP had a final compliance date of July 1, 2022.

25. On February 10, 2021, DEQ emailed approval of the CAP to Respondent.
26. On July 7, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.
27. The review revealed that Respondent reported the following violations of the permitted effluent discharge limitations detailed in Part I, Section A of the Permit from November 1, 2020, through May 31, 2021:
- a. Two (2) violations of Total Suspended Solids;
  - b. One (1) violation of Dissolved Oxygen; and
  - c. Nine (9) violations of Ammonia Nitrogen.
28. Each of the twelve (12) discharge limitation violations listed in Paragraph 27 above constitutes a separate permit violation for a total of twelve (12) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
29. On August 2, 2021, Respondent submitted a modification and construction application to DEQ. The application requested to replace the sand filters with moving bed bio-reactors.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall complete the terms and milestones contained in the CAP submitted to DEQ on January 29, 2021. The final compliance date shall be the last day of the twelfth month following the effective date of the Construction Permit. The milestones and final compliance date 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 completion of the milestones and compliance with the final permitted effluent limits set forth in Part I,

Section A of the Permit. Respondent shall submit a final compliance report stamped by a Professional Engineer licensed in the state of Arkansas, which shall certify completion of the milestones and compliance with the permitted effluent limits was achieved on or before the final compliance date.

3. Within sixty (60) days of the effective date of this Order, Respondent shall submit an interim operating plan that describes, in detail, the operational measures that will be undertaken to maximize the removal efficiency of all pollutants covered by this Permit consistently. Respondent shall implement the interim operating plan immediately upon its submittal to DEQ.

4. 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 (\$8400.00) dollars, of which Eight Thousand Four Hundred Dollars (\$8400.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Eight Thousand Four Hundred Dollars (\$8400.00) 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 Four Hundred Dollars (\$8400.00) shall become immediately due and payable to DEQ and shall be mailed to the attention of:

DEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, AR 72118

In the event that Respondent fails to comply with the terms of this order, is required to pay the civil penalty, and fails to pay the civil penalty, DEQ shall be entitled to attorneys' fees and costs of collection.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.



11. The undersigned representative of the Respondent certifies that he or she is a Commissioner of the Respondent and thus authorized to execute this Order and to legally bind the Respondent to its terms and conditions. Execution of this Order by an individual other than a Commissioner 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 SEPTEMBER, 2021.

Julie Linck  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Grand Prairie Bayou Two Public Water Authority  
Mount Tabor Estates WWTF

BY: Woody Bryant  
(Signature)

Woody Bryant  
(Typed or printed name)

TITLE: President of the Board

DATE: 9/20/21