

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Arkansas City
PO Box 369
Arkansas City, Arkansas 71630

LIS No. 21- 100
Permit No. AR0035751
AFIN 21-00044

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 City of Arkansas City (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 facility (“facility”) located on County Road 34, Arkansas City, Desha County, Arkansas.
2. Respondent discharges treated wastewater to the Mississippi River in Segment 6A of the Mississippi River Basin.

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.

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 AR0035751 (“Permit”) to Respondent on May 24, 2019. The Permit became effective on June 1, 2019, and expires on May 31, 2024.
10. DEQ issued a minor modification to the Permit on June 24, 2019, with an effective date of July 1, 2019, correcting Outfall 001 to Outfall 002.

11. On February 25, 2021, DEQ received a complaint of a Sanitary Sewer Overflow (SSO) at the facility's treatment ponds. DEQ enforcement contacted Respondent by phone and asked them to investigate and provide a response.

12. On February 25, 2021, Respondent submitted a response to DEQ by email and phone stating they could find no evidence of an overflow at the facility.

13. On February 25, 2021, DEQ conducted a review of the certified Discharge Monitoring Reports (DMR) submitted by Respondent in accordance with the Permit. 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 January 31, 2021:

- a. One (1) violation of Total Suspended Solids;
- b. One (1) violation of Biochemical Oxygen Demand; and
- c. Two (2) violations of Fecal Coliform Bacteria.

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

15. On March 1, 2021, Respondent and Respondent's consultant informed DEQ by phone that the facility was in disrepair and that Respondent had employed its consultant to address SSO issues due to flooding, Inflow and Infiltration (I&I), and reconstruction and reinforcement of the Wastewater Treatment Lagoon, which showed signs of significant erosion.

16. Part II, Condition 6 of the Permit requires Respondent to report SSOs. A review of SSO reporting revealed that no SSOs have been reported to DEQ during the period February 1, 2018, through March 31, 2021.

17. On April 8, 2021, Respondent, through its consultant, submitted a Corrective Action Plan (CAP), milestone schedule, and request to enter into a Consent Administrative Order with DEQ to address potential eminent wastewater treatment pond levee failure, possible effluent limit violations, I&I, and SSOs.

18. On April 12, 2021, DEQ requested additional information from Respondent regarding the corrective actions planned to address the levee, SSOs and I&I issues. As of July 21, 2021, DEQ has not received the requested additional information.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a revised comprehensive CAP developed by a Professional Engineer licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations, repair the mechanical equipment, address the collection system inflow and infiltration, and repair and reinforce the treatment lagoon levees. The CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2024. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2024, of the CAP. The milestone schedule 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 actions in progress and completed towards completion of the CAP. Respondent shall submit a final compliance report by December 31, 2024.

3. In compromise and full settlement of the violations identified in the Findings of Fact, Respondent agrees to submit a revised CAP for approval, submit required permit applications for construction, modification, or rehabilitation identified by the approved CAP, complete the actions identified in the approved CAP, provide DEQ with periodic updates in accordance with Paragraph 2 above describing Respondent's progress towards completing the actions identified in the approved CAP, and comply with the civil penalty requirements as defined by Paragraph 4.

4. Respondent agrees to pay a civil penalty of Two Thousand Four Hundred Dollars (\$2400.00), of which Two Thousand Four Hundred Dollars (\$2400.00) shall be conditionally SUSPENDED by DEQ. If Respondent fully complies with this Order, the suspended civil penalty of Two Thousand Four Hundred Dollars (\$2400.00) 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 Four Hundred Dollars (\$2400.00) shall be payable immediately to DEQ. 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 to the extent permitted by law.

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. 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.

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

13. 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 4TH DAY OF OCTOBER, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Arkansas City

BY: 
(Signature)

RICK HACES, MAYOR
(Typed or printed name)

TITLE: MAYOR

DATE: 9/21/2021

RESOLUTION NO. 9-02-21

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK/TREASURER TO SIGN THE CONSENT ADMINISTRATION ORDER TO ADDRESS THE CITY'S WASTEWATER SYSTEM ISSUES AND AUTHORIZING THE MAYOR AND CITY CLERK/TREASURER TO EXPEND FUNDS FOR COMPLIANCE ACTIVITIES REQUIRED BY THE ORDER.

WHEREAS, the City of Arkansas City, Arkansas (the City) operates a municipal wastewater treatment facility ("facility") located on County Road 34, Arkansas City, Desha County, Arkansas; and

WHEREAS, the City discharges treated wastewater to the Mississippi River in Segment 6A of the Mississippi River Basin; and

WHEREAS, the City is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES) and operates under the authority of the Division of Environmental Quality (DEQ) under NPDES Permit Number AR0035751; and

WHEREAS, DEQ has issued a proposed Consent Administrative Order (CAO) for violations of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-201 et seq., at City's wastewater treatment system;

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF ARKANSAS CITY, ARKANSAS:

SECTION 1: The Order has been reviewed and approved by the City Council of Arkansas City in a duly convened meeting with a quorum present.

SECTION 2: The City Council of Arkansas City has authorized the Mayor and City Treasurer to sign the Order on behalf of the City.

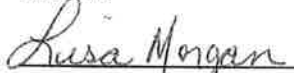
SECTION 3: The City Council of Arkansas City has authorized the Mayor and City Treasurer to expend funds for compliance activities required by the Order including but not limited to the payment of a civil penalty as set forth in the Order.

PASSES THIS 21 DAY OF September, 2021.



Rick Hales, Mayor

ATTEST:



Lisa Morgan, Recorder/Treasurer