

CK# 6583

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

B&R Meat Processing, LLC
633 North Devils Den Road
Winslow, AR 72959

LIS No. 21- 101
Permit No. 5200-WR-1
AFIN 72-02163

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 B&R Meat Processing, 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 slaughter house with a septic tank and subsurface fluid distribution system (“facility”) for wastewater treatment located at 633 North Devils Den Road, Winslow, Washington 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 is regulated pursuant to the Arkansas Water and Air Pollution Control Act (“Act”), Ark. Code Ann. § 8-4-101 et seq.
3. DEQ is authorized under 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.
4. 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].
5. 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.
6. 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.”
7. DEQ issued Permit Number 5200-WR-1 (“Permit”) to Respondent on March 28, 2019. The Permit became effective on April 1, 2019, and expires on March 31, 2024.

Inspection

8. On August 29, 2020, DEQ received a public complaint concerning the odor at the facility and the drains.
9. On September 4, 2020, DEQ conducted a compliance evaluation inspection of the facility. During the inspection, DEQ documented the following violations:

- a. DEQ observed active wastewater surfacing in the leach field of the septic system and evidence of the surfacing wastewater flowing off the site to neighboring property south of the facility. Dead vegetation was also observed in the area surrounding the tanks indicating overflows. These conditions violated Part I, Condition 3 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- b. The volume of wastewater entering the septic system exceeds the design capacity of 250 gallons per day. This exceedance violated Part I, Condition 5 of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).
- c. Respondent has not reported any surfacing wastewater, overflows from the tanks, or other discharges of wastewater to DEQ. Any violations of the Permit are required to be reported to DEQ within twenty-four (24) hours of occurrence. This failure to report the observed violations of the Permit is a violation of Part II, Condition 13.A of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

10. On October 13, 2020, DEQ notified Respondent of the inspection results via letter and requested a written response to the violations be submitted to DEQ by October 27, 2020.

11. On December 18, 2020, DEQ sent Respondent a certified letter due to Respondent's failure to respond to the September 4, 2020 inspection.

12. On January 7, 2021, DEQ received an email from Respondent regarding the reason for the delayed response. DEQ responded to Respondent's email and requested additional information

13. On January 14, 2021, DEQ received a response to DEQ's request for additional information from Respondent.

14. On February 1, 2021, DEQ notified Respondent by letter that the January 7, 2021 response did not fully address the violations documented in the September 4, 2020 inspection report and requested a written response to address the documented violations be submitted to DEQ by February 17, 2021.

15. On March 31, 2021, DEQ sent Respondent a certified letter due to Respondent's failure to respond to DEQ's letter dated February 1, 2021.

16. On May 13, 2021, DEQ contacted Respondent via phone and email requesting a response to the September 4, 2020 inspection.

17. To date, DEQ has not received an adequate response to the September 4, 2020, inspection.

Permitting

18. On November 10, 2020, Respondent submitted a permit modification application to DEQ to modify the current Permit and authorize an expansion of the septic system and subsurface fluid distribution system.

19. On December 3, 2020, DEQ notified Respondent via letter that the application for a no-discharge modification was incomplete. DEQ requested that Respondent submit information to satisfy the deficiencies by December 17, 2020. Respondent did not submit the requested information by December 17, 2020.

20. On January 6, 2021, DEQ again notified Respondent via letter that the application for a no-discharge modification was incomplete. DEQ requested that Respondent submit information to satisfy the deficiencies by January 20, 2021. Respondent did not submit the requested information by January 20, 2021.

21. On February 5, 2021, DEQ notified Respondent that the application for no-discharge modification was placed in a withdrawn status for failure to respond.
22. On February 12, 2021, DEQ received a permit modification application from Respondent.
23. On March 16, 2021, DEQ notified Respondent via letter that the application for a no-discharge modification was incomplete. DEQ requested that Respondent submit information to satisfy the deficiencies by March 30, 2021.
24. On March 31, 2021, DEQ received a revised permit modification application from Respondent.
25. On April 12, 2021, DEQ notified Respondent that the application was administratively complete.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Within ten (10) calendar days of the effective date of this Order, Respondent shall submit a non-compliance report for the surfacing wastewater observed by DEQ during the September 4, 2020 inspection.
2. Within sixty (60) days of the effective date of this Order, Respondent shall provide photographic evidence documenting remediation and revegetation of the flow path and the unauthorized system discharges observed by DEQ during the September 4, 2020 inspection.
3. Within one (1) year of the effective date of this Order, Respondent shall complete construction of the expansion of the wastewater disposal and treatment system and submit the Permit-required certification to DEQ.
4. On or before the fifteenth (15th) day of the month following the effective date of this Order, and each month thereafter for a period lasting until this Order is closed, Respondent shall

submit monthly reports detailing progress made towards completion of construction and actions taken to prevent or address surfacing and unauthorized discharges during the previous month.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Six Hundred Fifty Dollars (\$1650.00), or one-half of the full civil penalty of Eight Hundred Twenty Five Dollars (\$825.00) 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 4th DAY OF OCTOBER, 2021.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

B&R Meat Processing, LLC

BY: 

(Signature)

Scott Ridenour

(Typed or printed name)

TITLE: Owner / Manager

DATE: 9-16-2021
