

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Town of Tollette  
P.O. Box 418  
Tollette, AR 71851

LIS No. 21- 109  
Permit No. AR0045144  
AFIN 31-00086

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 Town of Tollette (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 municipal wastewater treatment facility (“facility”) located on Willow Street, Tollette, Howard 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 via pipeline from the facility to Mine Creek, thence to Millwood Lake, thence to the Little River, thence to the Red River in Segment 1C of the Red 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 AR0045144 (“Permit”) to Respondent on August 3, 2018. The Permit became effective on September 1, 2018, and expires on August 31, 2023.

10. On April 12, 2021, DEQ received a complaint that sewage was overflowing from a manhole near 210 Oak Street in Tollette, AR.
11. On April 23, 2021, DEQ contacted Respondent via telephone regarding the April 12, 2021 complaint. DEQ requested Respondent submit written documentation of the incident and the corrective actions being taken.
12. On April 23, 2021, Respondent notified DEQ the manhole on Oak Street had been pumped down and lime, degreaser, and odor eater had been placed near the area. Respondent notified DEQ that they are working with an engineering firm to develop a plan to make the necessary repairs and upgrades to the collection system.
13. On April 26, 2021, DEQ received an email compliant containing photographic documentation of a sanitary sewer overflow (SSO) occurring at 210 Oak Street.
14. On April 26, 2021, DEQ sent an email to Respondent requesting a Corrective Action Plan (CAP) to address the problems occurring within the collection system and facility. DEQ requested the CAP be submitted by May 31, 2021. The CAP was to have a milestone schedule and a final date of compliance.
15. On May 18, 2021, DEQ received another complaint about the SSO occurring at 210 Oak Street. DEQ notified the complainant that Respondent was developing a CAP to address the issues.
16. On May 27, 2021, Respondent submitted a CAP with a final compliance date of August 31, 2023.
17. On June 1, 2021, DEQ notified Respondent via letter that the CAP submitted on May 28, 2021, was deemed adequate.

18. On June 1, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit. The review revealed that Respondent failed to conduct analyses for the monitoring period end date of November 30, 2018. Failure to conduct monthly analyses is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

19. DEQ conducted a review of the SSOs and treatment bypasses reported by Respondent in accordance with the Permit for the period of April 1, 2018, through April 30, 2021. The review revealed the following:

- a. Respondent reported eleven (11) SSOs. Respondent is permitted to discharge treated municipal wastewater from its facility. Respondent is not permitted to discharge untreated wastewater from its collection system. Each SSO constituted an unpermitted discharge. Each SSO is a violation Ark. Code Ann. § 8-4-217(b)(1)(E) and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. On July 20, 2021, DEQ received another complaint regarding issues with the collection system.

May 20, 2021 and August 3, 2021 Inspections

21. On May 20, 2021, DEQ conducted an SSO/collection system inspection of the facility. During the inspection, DEQ documented the following Operation and Maintenance violations, in violation of Part III, Section B, Condition 1.A of the Permit and therefore in violation of Ark. Code Ann. § 8-4-217(a)(3).

- a. Emergency contact information was not posted at either of the lift stations; and

- b. A manhole connected to the Pump Station Drive lift station showed signs of an overflow. The vegetation around the manhole was black from sewage.

22. On August 3, 2021, DEQ conducted a compliance evaluation inspection of the facility.

During the inspection, DEQ documented the following violations:

- a. Respondent is not documenting the flow measurement five (5) times per week. This is a violation of Part I, Section A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- b. Respondent does not employ a Class I wastewater operator. Failure to employ a licensed operator to operate the facility is a violation of Part II, Condition 1 of the Permit and Chapter 3 of APC&EC Rule 3 and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
- c. Three (3) ponds have an excessive amount of duckweed that has the potential to reduce the effectiveness of the natural biological cycles of the ponds. This is a violation of Part III, Section B, Condition 1 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

23. On August 27, 2021, DEQ notified Respondent of the May 20, 2021, and August 3, 2021 inspection results via letter and requested a written response be submitted to the Enforcement Branch within thirty (30) calendar days of receipt of the letter.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit to DEQ a written response to the violations documented in the May 20, 2021 and August 3, 2021 inspections.
2. On or before the effective date of this Order, Respondent shall comply with the CAP dated May 27, 2021, and final compliance date of August 31, 2023. The CAP, milestone schedule, and final compliance date of August 31, 2023, 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 compliance with the final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit the final compliance report by August 31, 2023.
3. Respondent shall report all SSOs to DEQ in accordance with Part II, Condition 5.B and Part III, Section D, Condition 6 of the Permit.
4. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ proof that they employ a Class I wastewater operator.
5. Respondent shall sample the effluent in accordance with Part I, Section A of the Permit.
6. Within twelve (12) months of the effective date of this Order, Respondent shall develop and submit to DEQ for review and approval a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system. The SSES must be certified by a professional engineer licensed in the state of Arkansas.
  - a. The SSES should at minimum have the following elements:
    - i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;

- ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;
- iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
- iv. Develop a manhole inspection program, beginning in highest priority area; and
- v. Recommend a method of repair and develop a cost estimate for those repairs.

Based on the results of the above studies, Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Short-term and long-term improvements must be considered to remedy the identified deficiencies.

- b. The SSES shall include an SSO Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective actions fully and expeditiously. Upon approval by DEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and become fully enforceable as the terms of this Order.

7. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Four Hundred Dollars (\$1400.00), or one-half of the full civil penalty of Seven Hundred Dollars (\$700.00) 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. 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.

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

16. 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 20<sup>th</sup> DAY OF OCTOBER, 2021.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Town of Tollette

BY: Brenda Kay Porter  
\_\_\_\_\_  
(Signature)

Brenda Kay Porter  
\_\_\_\_\_  
(Typed or printed name)

TITLE: Mayor  
\_\_\_\_\_

DATE: 10-12-2021

**Mayor**  
Brenda Porter  
  
**Recorder**  
Dorothy Walker

*Town of Tollette*  
P. O. BOX 418  
MINERAL SPRINGS, AR 71851  
Telephone: (870) 287-7200  
Fax: (870) 287-7233

**Aldermen**  
James Porter, Jr.  
Jeffery Barber  
Martha Forte  
Lois Hendrix

TOLLETTE TOWN COUNCIL SESSION  
OCTOBER 12, 2021  
5:30 PM

The regular council meeting opened at 5:30 pm with Mayor Brenda Porter presiding. Prayer by Alderwoman Lois Hendrix. On roll call the follow council members answered; Present: Council members: James Porter, Lois Hendrix, Jeff Barber and Martha Forte.

The last minutes were reviewed. A motion and second by Alderwoman Lois Hendrix, James Porter (respectively) to adopt the minutes as read. The motion was carried by all. Presented to the board was the finance report from all funds. The report was reviewed by the board and a motion and second by Alderman James Porter, Jeff Barber (respectively) that the reports shall be adopted. The motion was carried by a vote of yeas from all members present.

BUSINESS:

**WATER/SEWER:** Reports from the water supt. concerning the day to day operation of the water. All was going well with the cut-off list. The water reports from the health dept. was ok.

There was one pump that had to be replaced at the small pump station located on MLK. A waste water report was read by the Mayor to the board concerning violations that the town had received from "Arkansas Department Of Energy And Environment Division Of Quality." This Consent Administrative Order" and its contents was read in full to the board. After discussion of this matter, there was a motion and second by Jeff Barber, James Porter (respectively) that the mayor shall comply with the demands of the report and shall be signed by the mayor and recorder. The motion was carried by a roll call vote of "yeas" by all.

**FIRE:** the report concerning the fire department consist of the fire department cleaning and burning areas in town for the citizens. We used this service for fire training purposed. The fire department was given a rescue van for the fire department.

There being no other business at hand, a motion and second for this meeting to adjourn. This motion was carried by all. This meeting was adjourned.

Brenda Porter, Mayor  
Dorothy Walker, Recorder

