

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Danville
P.O. Box 69
Danville, AR 72833

LIS No. 21- **135**
Permit No. AR0022241
AFIN 75-00037

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 Danville (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 Cottontail Lane, Danville, Yell County, Arkansas.
2. Respondent discharges treated wastewater to the Petit Jean River, thence to the Arkansas River in Segment 3G of the Arkansas 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 AR0022241 (“Permit”) to Respondent on April 29, 2014. The Permit became effective on June 1, 2014, and expired on May 31, 2019. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on October 1, 2019, with an effective date of October 1, 2019, and an expiration date of September 30, 2024.

Consent Administrative Order LIS 19-067

10. On July 31, 2019, Respondent and DEQ entered into Consent Administrative Order LIS 19-067 (CAO LIS 19-067) to address repeated effluent violations.
11. To date, Respondent has continued to report effluent violations and therefore has not met the requirements of CAO LIS 19-067.

Effluent Violations

12. On March 23, 2021, DEQ sent Respondent a letter requesting a Revised Corrective Action Plan (RCAP) be submitted to address the repeated effluent violations. The RCAP was to have a milestone schedule and a final date of compliance.
13. On May 19, 2021, Respondent submitted a RCAP with a final date of compliance of March 2022.
14. On May 25, 2021, DEQ sent a letter approving the RCAP submitted on May 19, 2021.
15. On September 30, 2021, DEQ and Respondent met to discuss the RCAP and repeated effluent violations. DEQ requested Respondent submit an updated RCAP with a revised milestone schedule.
16. On September 30, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
17. 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 January 1, 2020, through August 31, 2021:
 - a. Eight (8) violations of Fecal Coliform Bacteria;
 - b. Four (4) violations of Dissolved Oxygen;
 - c. Three (3) violations of Total Suspended Solids;

d. Two (2) violations of Ammonia Nitrogen; and

e. One (1) violation of pH.

18. Each of the eighteen (18) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of eighteen (18) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. On October 6, 2021, Respondent submitted an updated milestone schedule with a final compliance date of April 2023.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the effective date of this Order, CAO LIS 19-067 shall be closed.
2. Respondent shall immediately comply with the updated milestone schedule, dated October 6, 2021, and final compliance date of April 2023. The updated CAP, milestone schedule, and final compliance date of April 2023, shall be fully enforceable as terms of this Order.
3. On or before April 30, 2023, Respondent shall submit a certification of compliance from a Professional Engineer (P.E.) licensed in the state of Arkansas, stating that the corrective actions listed in the updated milestone schedule, dated October 6, 2021, have been completed and that Respondent is in compliance with the Permit.
4. 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 Permit.
5. 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 P.E. 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 such. 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 shall be considered to remedy deficiencies.
- b. The SSES shall include an SSO Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective action fully and expeditiously. Upon approval by DEQ, the SSO Plan and milestone schedule shall be fully enforceable as terms of this Order.

6. Respondent agrees to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00), of which Two Thousand Four Hundred Dollars (\$2400.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. 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 Four Thousand Eight Hundred Dollars (\$4800.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of Two Thousand Four Hundred Dollars (\$2400.00) 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 to the extent permitted by law.

7. 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.

8. 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.

9 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

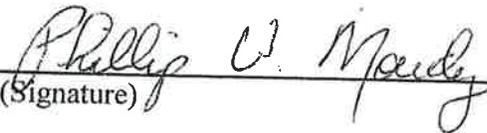
15. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty as set forth in this Order. See Exhibit A.

SO ORDERED THIS 13~~th~~ DAY OF DECEMBER, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Danville

BY: 
(Signature)

Phillip W. Moody
(Typed or printed name)

TITLE: Mayor

DATE: 12/8/21

RESOLUTION NO. 12-08-2021

WHEREAS, The City of Danville, Arkansas was notified by the Arkansas Department of Energy and Environment Division of Environmental Quality (DEQ) that was issued a Consent Administrative Order (CAO) for violations of its NPDES Discharge Permit No. AR0022241 for the period of January 2020 through August 2021; and

WHEREAS, the CAO requires the City to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00) or which Two Thousand Four Hundred Dollars (\$2400.00) shall be conditionally suspended by DEQ. The suspended portion will be dismissed by DEQ providing that the City complies with the terms of the CAO; and

WHEREAS, the City Council of Danville is well aware and apprised of the above-mentioned CAO and the efforts that will be taken to resolve the matter.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Danville, Arkansas that the Mayor and City Clerk/Treasurer is hereby authorized to sign the CAO and expend funds for compliance activities required by the CAO including but not limited to the payment of a civil penalty as set forth in the CAO for the City of Danville.

Passed this 8th day of December, 2021.

APPROVED: Phillip W. Moudy Barbara Redfern
Mayor Phillip Moudy Clerk