

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Sulphur Rock
P.O. Box 130
Sulphur Rock, AR 72579

LIS No. 21- *136*
Permit No. AR0046680
AFIN 32-00111

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 Sulphur Rock (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 system (“facility”) located on Highway 69 in Sulphur Rock, Independence County, Arkansas.
2. Respondent discharges treated wastewater to Big Creek, thence to the White River in Segment 4F of the White 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 AR0046680 (“Permit”) to Respondent on October 30, 2018. The Permit became effective on November 1, 2018, and expires on October 31, 2023.

10. On September 30, 2019, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations reported for the following parameters:

- a. Carbonaceous Biochemical Oxygen Demand;
- b. Total Suspended Solids;
- c. Ammonia Nitrogen;
- d. Dissolved Oxygen; and
- e. Fecal Coliform Bacteria.

The CAP was to have a milestone schedule, a final compliance date, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

11. On October 24, 2019, Respondent submitted a CAP to DEQ. The CAP had a final compliance date of November 30, 2020.

12. On September 22, 2020, DEQ requested that Respondent submit a CAP update by October 2, 2020.

13. On September 25, 2020, Respondent submitted an updated CAP to DEQ. The updated CAP had a final compliance date of February 26, 2021.

14. On April 30, 2021, Respondent submitted an updated CAP to DEQ. The updated CAP had a final compliance date of August 31, 2021.

15. On October 11, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

16. 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 October 1, 2019, through September 30, 2021:

- a. Fifty-six (56) violations for Carbonaceous Biochemical Oxygen Demand;
- b. Sixty-three (63) violations of Total Suspended Solids;
- c. Forty-nine (49) violations of Ammonia Nitrogen;

- d. Four (4) violations of Dissolved Oxygen; and
- e. Twenty-seven (27) violations of Fecal Coliform Bacteria.

17. Each of the 199 discharge limitation violations listed in Paragraph 16 above constitutes a separate permit violation for a total of 199 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit a Corrective Action Report to DEQ. The report shall detail the corrective actions that have been taken thus far to correct the violations referenced in the Findings of Fact above, include photographic evidence, and be certified in accordance with Part III, Section D, Condition 11 of the Permit.
2. Respondent shall immediately comply with all permitted effluent limits, unless a CAP is submitted, as provided in Paragraph 3 of this Order, and approved by DEQ, in which case, Respondent shall comply with all permitted effluent limits no later than December 31, 2023.
3. If Respondent is unable to comply immediately with all permitted effluent limits, Respondent shall, within thirty (30) calendar days of the effective date of this Order, submit to DEQ, for review and approval, a comprehensive CAP developed by a P.E. licensed in the state of Arkansas. The comprehensive CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in the Findings of Fact and prevent future violations. The comprehensive CAP shall include a reasonable milestone schedule with a date of final compliance no later than December 31, 2023. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date contained in the approved CAP. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

4. If Respondent submits a comprehensive CAP pursuant to Paragraph 3 above, 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 first report on or before the fifteenth (15th) day of the month following the approval of Respondent's CAP and each quarter thereafter until this Order is closed. Respondent shall submit the final compliance report by December 31, 2023.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Six Thousand Dollars (\$6000.00), of which Five Thousand Dollars (\$5000.00) 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 Five Thousand Dollars (\$5000.00) 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 Six Thousand Dollars (\$6000.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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.

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. 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.

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

14. 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 13TH DECEMBER ~~22~~ DAY OF November, 2021.


JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Sulphur Rock

BY: 
(Signature)

Paula Summers
(Typed or printed name)

TITLE: Mayor

DATE: 11/22/21

A RESOLUTION TO AUTHORIZE PERSONS TO ENTER INTO CONSENT AGREEMENTS ON BEHALF OF THE CITY OF SULPHUR ROCK,

WHEREAS; The City of Sulphur Rock, Arkansas has received a proposed consent order by the Arkansas Department of Environmental Quality, and

WHEREAS; it is necessary to appoint persons who are authorized to sign documents on behalf of the City of Sulphur Rock, Arkansas.

THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULPHUR ROCK, ARKANSAS:

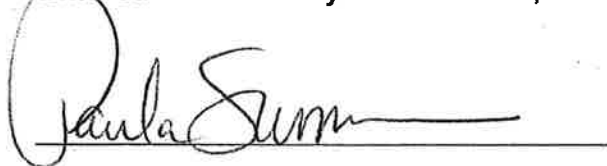
Section 1: That the Mayor of Sulphur Rock, Arkansas is authorized to execute any document regarding the resolution of the claims made by the Arkansas Department of Environmental Quality dated November 19, 2021, more specifically Mayor Paula Summers is approved and authorized to enter into negotiations and to execute any document necessary to resolve the allegations as mentioned by the aforesaid governmental entity.

Section 2. That the City Clerk of Sulphur Rock, Arkansas is authorized to execute any document regarding the resolution of the claims made by the Arkansas Department of Environmental Quality dated November 19, 2021, more specifically City Clerk, Ann Heathwaite is approved and authorized to enter into negotiations and to execute any document necessary to resolve the allegations as mentioned by the aforesaid governmental entity.


Section 3. The Mayor and/or the City Clerk may approve for payment out of funds approved by City Council for those purposes or may disapprove any bills, debts or liabilities asserted as claims against the City.

Section 4. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application so the resolution which can be given effect without the invalid provision or application to this end the provision of this resolution are declared to be severable.

Entered this 22th day of November, 2021.



Mayor, City of Sulphur Rock, Arkansas



City Clerk, Sulphur Rock, Arkansas