

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

U.S. Army Corps of Engineers  
Iron Mountain Recreation Area, DeGray Lake  
729 Channel Road  
Arkadelphia, AR 71923

LIS No. 22- 003  
Permit No. AR0020222  
AFIN 10-00066

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 U.S. Army Corps of Engineers – Iron Mountain Recreation Area, DeG`ray Lake (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 domestic wastewater treatment facility (“facility”) located on Iron Mountain Recreation Area Road, Caddo Valley, Clark County, Arkansas.
2. Respondent discharges treated wastewater to Degray Lake, thence to the Caddo River, thence to the Ouachita River in Segment 2F of the Ouachita River Basin.

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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.

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 AR0020222 (“Permit”) to Respondent on October 30, 2018. The Permit became effective on November 1, 2018, and expires on October 31, 2023.

10. On October 27, 2020, DEQ conducted a routine compliance evaluation inspection of the facility. The inspection revealed the following violations:

- a. Respondent was using the improper chlorine tablets. This action 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).
  - b. Respondent improperly reported the concentration of Total Suspended Solids on a Discharge Monitoring Report (DMR). This failure is a violation of Part III, Section C, Condition 5 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).
11. On December 16, 2020, DEQ notified Respondent of the inspection results via letter.
12. On January 7, 2021, DEQ received a response from Respondent to the violations cited in the October 27, 2021 inspection report.
13. On June 23, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.
14. 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 May 1, 2018, through May 31, 2021:
  - a. Eight (8) violations of Ammonia Nitrogen;
  - b. Eight (8) violations of Total Suspended Solids;
  - c. Seven (7) violations of Fecal Coliform Bacteria;
  - d. Seven (7) violations of Total Phosphorus; and
  - e. One (1) violation of Total Residual Chlorine.
15. Each of the thirty-one (31) discharge limitation violations listed in Paragraph 14 above constitutes a separate permit violation for a total of thirty-one (31) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

16. On June 23, 2021, DEQ sent a letter to Respondent requesting a Corrective Action Plan (CAP) be submitted by July 21, 2021, to address the repeated effluent violations. DEQ requested that the CAP include a milestone schedule with a final date of compliance and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

17. On July 20, 2021, Respondent submitted a CAP to DEQ. The CAP detailed short-term corrective actions necessary to achieve compliance with a final compliance date of December 17, 2021.

18. On July 21, 2021, DEQ notified Respondent via letter that the CAP, dated July 20, 2021, was adequate. The letter also notified Respondent that the proposed corrective actions could not begin until the State Construction Permit (AR0020222C) had been issued. DEQ requested bi-monthly progress reports be submitted.

19. On August 13, 2021, and October 14, 2021, Respondent submitted progress reports detailing the progress that has been made towards achieving final compliance with the permitted effluent discharge limits.

20. On September 8, 2021, DEQ notified Respondent that the inspection response submitted on January 7, 2021, sufficiently addressed all violations found during the October 27, 2020 inspection.

21. On October 27, 2021, DEQ conducted a follow-up review of certified DMRs submitted by Respondent in accordance with the Permit.

22. 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 June 1, 2021, through September 30, 2021:

- a. Three (3) violations of Total Phosphorus;

b. Two (2) violations of Total Suspended Solids; and

c. Two (2) violations of Ammonia Nitrogen.

23. Each of the seven (7) discharge limitation violations listed in Paragraph 22 above constitutes a separate permit violation for a total of seven (7) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

24. On November 10, 2021, DEQ and Respondent met via Zoom to discuss the effluent violations and CAP.

25. On November 23, 2021, Respondent submitted a Revised CAP with a final compliance date of October 1, 2022.

#### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date of October 1, 2022, contained in the Revised CAP dated November 23, 2021. The milestone schedule and final compliance date of October 1, 2022, 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 no later than December 31, 2022.

3. In compromise and full settlement of the violations specified in the Findings of Fact, and to the extent permitted by law, Respondent agrees to pay a civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00), of which Four Thousand Eight Hundred Dollars (\$4800.00) 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 Four Thousand Eight Hundred Dollars (\$4800.00) 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 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Each of the undersigned representatives of the parties certifies that he or she is authorized to execute this Order and to legally bind that party to its terms and conditions.

SO ORDERED THIS 3<sup>rd</sup> DAY OF JANUARY, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

U.S. Army Corps of Engineers – Iron Mountain Recreation Area, DeGray Lake

BY: Jason Mooney  
(Signature)

Jason D. Mooney, P.E.

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(Typed or printed name)

TITLE: Chief, Project Resources Management Branch

DATE: 16 December 2021