

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Hot Springs
780 Adams Street
Hot Springs, AR 71901

LIS No. 22- 007
Permit No. AR0033880
AFIN 26-00145

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 Hot Springs (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 major municipal wastewater treatment facility (“Regional Plant”) located at 320 Davidson Drive, Hot Springs, Garland County, Arkansas.
2. Respondent discharges treated wastewater from the Regional Plant to Lake Catherine, an impoundment of the Ouachita River, in Segment 2F of the Ouachita 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. DEQ issued NPDES Permit Number AR0033880 ("Permit") to Respondent for the Regional Plant on January 31, 2013. The Permit became effective on February 1, 2013, and expired on January 31, 2018. Respondent's permit coverage was administratively continued until DEQ renewed Respondent's Permit on August 22, 2018. The renewal Permit became effective on September 1, 2018, and expires on August 31, 2023.

5. 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).

6. 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.

7. Ark. Code Ann. § 8-4-217(a)(1) and (3) provide:

(a) It shall be unlawful for any person to:

(1) Cause pollution, as defined in § 8-4-102, of any of the waters of this state;

...

(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].

8. 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.

9. 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.”

10. Respondent operates a collection system (“system”) that routes wastewater to its Regional Plant for treatment. Part of that system is located along Gulpha Creek, Hot Springs, Garland County, Arkansas.

11. Respondent is authorized by its Permit to discharge treated wastewater from the Regional Plant to Lake Catherine, an impoundment of the Ouachita River, in Segment 2F of the Ouachita River Basin. Respondent is not authorized to discharge wastewater from its system.

12. When the manholes of the system overflow, Respondent discharges untreated wastewater to Gulpha Creek, thence to Spencer Bay of Lake Catherine, an impoundment of the Ouachita River, in Segment 2F of the Ouachita River Basin.

13. DEQ has received numerous complaints of recurring Sanitary Sewer Overflows (SSOs) from the system along Gulpha Creek from January 1, 2018, through July 31, 2021.

14. DEQ conducted a review of the SSOs reported by Respondent in accordance with the Permit for the period of January 1, 2018, through June 30, 2021. The review revealed that Respondent reported 140 SSOs that entered Gulpha Creek, totaling approximately 4,000,000 gallons. 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 unpermitted discharge violated Ark. Code Ann. § 8-4-217(b)(1)(E) and Ark. Code Ann. § 8-4-217(a)(1) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

15. On July 2, 2021, DEQ sent a letter to Respondent requesting that Respondent do the following:

- a. Perform a Water Quality Assessment (WQA) in Gulpha Creek upstream and downstream of manhole #1750, and at the location where the overflow from manhole #1750 enters Gulpha Creek. The WQA should be performed after each overflow occurring from the manhole #1750 and within twelve (12) hours of when the overflow ceases. The results should be submitted to DEQ.
- b. Submit an interim operating plan to include measures to stop the overflows occurring from manhole #1750. The plan should be submitted to DEQ by July 15, 2021.
- c. Submit a revised timeline for the repair and remediation of the collection system line that is connected to manhole #1750 by August 1, 2021, making the repairs of this line a priority.
- d. Contact DEQ to schedule a meeting to discuss the proposed timeline submitted on June 7, 2021.

16. On July 14, 2021, DEQ and Respondent met to discuss the proposed timeline dated June 7, 2021.

17. On July 15, 2021, Respondent submitted an extension request to submit the WQA plan, Interim Operating Plan, and revised timeline by August 16, 2021. On July 20, 2021, DEQ notified Respondent the extension request had been granted.

18. On July 20, 2021, DEQ sent a letter to Respondent requesting the following:

- a. Upon discovery of any SSO at manhole #1750 or any other manhole or pump station that discharges into Gulpha Creek, Respondent shall immediately sample the unpermitted discharge before confluence with the receiving stream for Fecal

Coliform Bacteria and *E. coli*. Respondent shall submit the results and supporting information to DEQ within three (3) days of the event sampled.

- b. Respondent shall submit a Communication Plan by July 23, 2021, that establishes a method to be used to notify the public of the water quality issues in Gulpha Creek and Spencer Bay of Lake Catherine, and provide a schedule for keeping the public informed about improvements or degradation of water quality in the water bodies mentioned above.
- c. Respondent shall submit an Interim Plan, by July 23, 2021, that describes the operational and best management practices that Respondent will immediately implement to mitigate the impact of the continued SSOs.

19. On July 23, 2021, Respondent submitted the Communication Plan and Bacteria Sampling Plan.

20. On August 3, 2021, DEQ provided specific suggestions for Respondent's Communication Plan and Bacteria Sampling Plan.

21. On August 16, 2021, Respondent submitted a response to DEQ's August 3, 2021 correspondence, including its WQA Plan and drawings and photographs of the containment structure installed around manhole 1750, and responses to DEQ specific suggestions.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall submit the WQAs to DEQ for review within three (3) calendar days of the completion of the assessment, but no later than ten (10) calendar days following each overflow occurrence. The WQAs shall include the analysis of pH, Dissolved Oxygen, Conductivity, Temperature, Turbidity, Total Dissolved Solids, Total Suspended Solids, Alkalinity, *E. coli*, Chloride, Sulfate, Carbonaceous Biochemical Oxygen Demand-5 day,

Ammonia as Nitrogen, Nitrate+Nitrite as Nitrogen, Kjeldahl Nitrogen as Nitrogen, Ortho-phosphorus as phosphorus, Total Phosphorus as phosphorus, and Chlorophyll a.

2. Respondent shall immediately implement the updated standard operating procedures contained in Respondent's August 16, 2021 response.

3. Respondent shall immediately implement the Communication Plan, dated July 23, 2021.

4. Upon review and approval by DEQ, Respondent shall comply with the terms, timeline, and final compliance date contained in the revised timeline for the repair and remediation of the collection system line along Gulpha Creek submitted on August 16, 2021. The revised timeline and final compliance date shall be fully enforceable as terms of this Order.

5. Respondent shall submit to DEQ monthly progress report detailing the actions that have been taken to achieve compliance. At a minimum, the reports shall include a list of the corrective actions initiated and completed since the previous report, the number of SSOs that occurred during the reporting period, and a statement of the overall progress towards achieving final compliance. Respondent shall submit monthly progress reports thereafter until the Order is closed.

6. In compromise and full settlement of the violations specified in the Findings of Fact Respondent agrees to pay a civil penalty of Sixty-Four Thousand Dollars (\$64,000.00), of which Fifty-One Thousand Two Hundred Dollars (\$51,200.00) 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 Fifty-One Thousand Two Hundred Dollars (\$51,200.00) 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 Sixty-Four Thousand Dollars (\$64,000.00) 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.

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 24th DAY OF JANUARY, 2022.



JULIE LINCK, ADMINISTRATOR OF ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Hot Springs

BY: 

(Signature)

Pat McCabe

(Typed or printed name)

TITLE: Mayor

DATE: January 4, 2022

RESOLUTION NO. 9942

A RESOLUTION APPROVING CONSENT ADMINISTRATIVE ORDER LIS 22- (GULPHA BASIN) AND AUTHORIZING THE MAYOR TO EXECUTE SAME.

WHEREAS, On December 21, 2021, the Arkansas Department Of Energy And Environment, Division of Environmental Quality (DEQ) sent notice to the City of Hot Springs of a proposed Consent Administrative Order (CAO) for violations of the Arkansas Water and Air Pollution Control Act at the Davidson Drive site; and that

WHEREAS, the attached CAO enumerates the violations in the "Finding of Fact" section, and outlines the step required to achieve compliance in the "Order and Agreement" section, and that

WHEREAS, to accept the terms and conditions set forth by DEQ, the attached COA LIS 22- should be approved, executed and returned to DEQ within 20 days.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Hot Springs, Arkansas:

That Consent Administrative Order LIS 22- is hereby approved and the Mayor is authorized and directed to execute the attached Consent Administrative Order LIS 22- with Arkansas Department of Energy And Environment, Division Of Environmental Quality, Provided further, that the City Manager, or his designee, is authorized to act on behalf of the City in the administration of same.

PASSED: January 4, 2022

APPROVED: 
PAT McCABE, MAYOR

ATTEST: 
HARMONY MORRISSEY, CITY CLERK