

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

U.S. Army Corps of Engineers  
W.G. Huxtable Pumping Plant  
167 North Main Street, RM B-202  
Memphis, TN 38103

LIS No. 22-008  
Permit No. AR0036897  
AFIN 39-00023

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 – W.G. Huxtable Pumping Plant (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 sanitary wastewater treatment facility (“facility”) located at 5825 Lee 501, Marianna, Lee County, Arkansas.
2. Respondent discharges treated wastewater to St. Francis River in Segment 5A of the St. Francis 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 AR0036897 (“Permit”) to Respondent on June 9, 2016. The Permit became effective on July 1, 2016, and expired on June 30, 2021.
10. On December 17, 2020, DEQ received a Permit renewal application from Respondent, with additional information received on December 21, 2020. The Permit renewal application was

deemed complete on December 21, 2020, and Respondent's coverage was administratively continued pursuant to APC&EC Rule 6.201.

11. On February 3, 2021, DEQ conducted a reconnaissance inspection of the facility. During the inspection, DEQ documented the following violations:

- a. Respondent is discharging process water from oil-water separators into the treatment lagoon. The current Permit does not authorize Respondent to use oil-water separators as a source to discharge process water and wastewater into the lagoon.
- b. The lagoon was functioning as a single cell lagoon, rather than a two cell lagoon. The levee in the lagoon, intended to create the two separate cells, was six feet under water. Failing to maintain the lagoon properly is a violation of Part III, Section B, Condition 1.A of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. On March 11, 2021, DEQ notified Respondent of the inspection results via letter and requested a written response to the violations be submitted to DEQ by March 25, 2021.

13. On April 28, 2021, DEQ received the Respondent's response to the violations documented in the February 3, 2021 inspection report.

14. On November 22, 2021, Respondent contracted to have wastewater pumped from the lagoon to restore the two-cell operation of the facility. Pursuant to Respondent's contract, the work is to be completed on or before December 11, 2021.

15. On December 22, 2021, the USACE modified the wastewater removal contract extending the completion date to 28 January 2022.

## ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before February 28, 2022, Respondent shall submit to DEQ, for review and approval, a memorandum notification signed by an Arkansas licensed Professional Engineer (P.E.). The notification shall state what methods were used to correct the violations listed in the Findings of Fact Paragraph 11.b, any actions Respondent will take to prevent future violations, and the date of completion of the corrective actions.
2. On or before February 28, 2022, Respondent shall submit a certification of compliance from a P.E. licensed in the state of Arkansas stating that the corrective actions have been completed and that Respondent is in compliance with the Permit.
3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to restore the two-cell operation of the facility and complete other corrective actions necessary to achieve compliance with the Permit by February 28, 2022.
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. This Order is effective upon the signature of the Chief

Administrator. 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. Nothing in this Order shall be interpreted to require Respondent to act in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

11. This Order shall not constitute an admission that the United States has waived sovereign immunity.

12. 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 24<sup>th</sup> DAY OF January, ~~2021~~ 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

U.S. Army Corps of Engineers – W.G. Huxtable Pumping Plant

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(Signature)

ZACHARY L. MILLER  
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(Typed or printed name)

TITLE: COLONEL, CORPS OF ENGINEERS

DISTRICT COMMANDER

DATE: 11 January 2022