

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Hayden's Place Utility Operating Company, LLC  
1650 Des Peres Rd. Ste. 303  
St. Louis, MO 63131

LIS No. 22-009  
Permit No. AR0050253  
AFIN 23-00611

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 Hayden's Place Utility Operating Company, LLC (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 wastewater treatment plant ("facility") located on Sunny Gap Road, Conway, Faulkner County, Arkansas. Respondent's facility is a "nonmunicipal domestic sewage treatment works" as defined by Ark. Code Ann. § 8-4-203(b)(1)(B).
2. Respondent discharges treated wastewater to an unnamed tributary of Bentley Creek (a/k/a/ Warren Creek), thence to Bentley Creek, thence to Palarm Creek, thence to Lake Conway,

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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.

thence to Palarm Creek, thence to the Arkansas River in Segment 3D of the Arkansas River Basin.

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 AR0050253 (“Permit”) to Respondent on June 23, 2017. The Permit became effective on August 1, 2017, and expires on July 31, 2022.

#### Permit Compliance Schedule

10. Per the requirements of Part I, Section B of the Permit, Respondent was to achieve compliance with the final effluent discharge limitations for Total Residual Chlorine (TRC) within three (3) years of the effective date of the Permit.

11. On March 5, 2019, and July 25, 2019, Respondent submitted progress reports to DEQ detailing the progress made towards achieving compliance with the final effluent discharge limitations for TRC, as required by Part I, Section B of the Permit.

12. On October 8, 2020, Respondent sent an email to DEQ stating that they were not in compliance with the final limits for TRC and the corrective actions required to do so would require a state construction permit, which had been applied for but not yet issued.

13. To date, Respondent has not been able to submit a certification of compliance for the final effluent discharge limitations for TRC.

#### Effluent Violations

14. On July 12, 2018, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

15. 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 February 1, 2018, through May 31, 2018:

- a. Ten (10) violations of Total Suspended Solids;
- b. Ten (10) violations of Ammonia Nitrogen;
- c. Three (3) violations of Dissolved Oxygen;
- d. Two (2) violations of Fecal Coliform Bacteria; and
- e. Two (2) violations of Carbonaceous Biochemical Oxygen Demand.

16. Each of the twenty-seven (27) discharge limitation violations listed in Paragraph 15 above constitutes a separate permit violation for a total of twenty-seven (27) separate violations of Ark. Code Ann. § 8-4-217(a)(3).
17. On July 13, 2018, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent limitations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.
18. On August 9, 2018, Respondent submitted a CAP to DEQ with a final compliance date of November 30, 2019.
19. On August 13, 2018, DEQ sent Respondent a letter approving the CAP submitted on August 9, 2018.
20. On December 21, 2018, Respondent submitted an update to the CAP submitted on August 9, 2018. The update stated that the facility was currently in compliance with the effluent limitations of the Permit but that Respondent was going to continue to monitor the facility to determine if additional corrective actions were necessary.
21. On February 8, 2019, DEQ sent Respondent a certified letter requesting an update on the status of compliance of the facility be submitted to DEQ by May 8, 2019.
22. On May 8, 2019, Respondent submitted an update to the CAP approved by DEQ on February 8, 2019, which stated that Respondent would be submitting an application for a construction permit to DEQ for additional repairs and upgrades at the facility.
23. On December 8, 2020, DEQ sent Respondent an email requesting an updated CAP be submitted. The updated CAP was to contain a milestone schedule, final date of compliance, and be certified by a P.E. licensed in the state of Arkansas.

24. On January 22, 2021, Respondent submitted an updated CAP to DEQ with a final compliance date of August 15, 2022.

25. On January 25, 2021, DEQ sent Respondent a letter approving the updated CAP submitted on January 22, 2021.

26. On January 25, 2021, DEQ conducted a follow-up review of the DMRs submitted by Respondent in accordance with the Permit.

27. 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, 2018, through December 31, 2020:

- a. Fifty-nine (59) violations of Ammonia Nitrogen;
- b. Forty-two (42) violations of Total Suspended Solids;
- c. Ten (10) violations of Carbonaceous Biochemical Oxygen Demand;
- d. Five (5) violations of Total Residual Chlorine;
- e. Five (5) violations of Fecal Coliform Bacteria; and
- f. Two (2) violations of Dissolved Oxygen.

28. Each of the 123 discharge limitation violations listed in Paragraph 27 above constitutes a separate permit violation for a total of 123 separate violations of Ark. Code Ann. § 8-4-217(a)(3).

#### Request for Capacity Increase

29. On February 5, 2021, Respondent submitted a letter to DEQ requesting to increase the design treatment capacity of the facility as part of its corrective actions necessary to provide adequate treatment. Respondent believes that the facility has experienced increased inflow volume that may be from sump pumps and drain connections from houses served by the facility.

30. Pursuant to Ark. Code Ann. § 8-4-203(b)(4)(B)(ii)(a), DEQ “shall require an initial trust fund contribution fee for each construction permit... resulting in an increase in design treatment capacity.”

31. Pursuant to Ark. Code Ann. § 8-4-203(b)(4)(B)(ii)(d), DEQ shall reduce the required initial trust fund contribution fee if:

- (1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and
- (2) The corrective actions approved by the division would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

32. Respondent’s proposed corrective actions include an increase that would require it to make an initial trust fund contribution.

33. On March 4, 2021, Respondent submitted an estimate of the cost to increase the design treatment capacity of the facility as part of its corrective actions.

34. On March 17, 2021, DEQ requested additional information concerning the estimate of the cost to increase the design treatment capacity of the facility.

35. On April 6, 2021, Respondent provided the requested information and an updated estimate of the cost to increase the design treatment capacity of the facility as part of its corrective actions.

36. On May 25, 2021, DEQ approved a reduced initial trust fund contribution based on Respondent’s updated estimate of the cost for specific items that would result in an increase in the design treatment capacity of the facility.

37. On August 2, 2021, Respondent notified DEQ that due to delays in obtaining a state construction permit, the milestone schedule listed in the approved updated CAP may be altered.

### ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. DEQ approves Respondent's request to increase the design treatment capacity of the facility as part of its corrective actions.
2. Respondent shall achieve compliance with the effluent limitations in the Permit no later than December 31, 2022.
3. 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. Respondent shall submit a final compliance report no later than the final compliance date.
4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand, Two Hundred Dollars (\$7200.00), or one-half of the full civil penalty of Three Thousand, Six Hundred Dollars (\$3600.00) if this Order is signed and returned to the Office of Water Quality Enforcement Branch, DEQ, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317, within twenty (20) calendar days of receipt of this Order. Payment 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

5. 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.

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. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein as attested by the secretary of said entity. Execution of this Order by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 24<sup>th</sup> DAY OF January, ~~2021~~ 2022  
  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Hayden's Place Utility Operating Company, LLC,

  
BY: Josiah Cox (Sep 28, 2021 18:00 CDT)  
(Signature)

Josiah Cox  
(Typed or printed name)

TITLE: President

DATE: Sep 28, 2021