

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Faulkner County Public Facility Board
d/b/a Preston Community Wastewater Utility
P.O. Box 198
Mayflower, AR 72106

LIS No. 22- 015
Permit No. AR0050571
AFIN 23-00884

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 Faulkner County Public Facility Board d/b/a Preston Community Wastewater Utility (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 facility (“facility”) located at 5 Brannon Landing Road, Mayflower, Faulkner County, Arkansas.
2. Respondent discharges treated wastewater to Lake Conway, thence into Palarm Creek, and thence into the Arkansas River in Segment 3F of the Arkansas 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 AR0050571 (“Permit”) to Respondent on May 30, 2017. The Permit became effective on July 1, 2017, was modified on July 20, 2017, and expires on June 30, 2022.

10. Per the requirements of Part 1, Section B of the Permit, Respondent was to achieve compliance with the final effluent limitations for Total Phosphorus (TP) within three (3) years of the effective date of the Permit.
11. On July 17, 2018, Respondent submitted the first annual progress report to DEQ detailing the progress towards achieving compliance with the final effluent limitations for TP.
12. On September 20, 2018, DEQ notified Respondent via email that the first annual progress report was received.
13. On July 18, 2019, Respondent submitted the second annual progress report to DEQ detailing the progress towards achieving compliance with the final effluent limitations for TP.
14. On May 11, 2020, DEQ notified Respondent that the following Discharge Monitoring Reports (DMRs) were missing the Total Residual Chlorine values:
 - a. September 2017;
 - b. December 2017;
 - c. March 2018;
 - d. June 2018; and
 - e. September 2018.

DEQ requested that the DMRs be corrected by May 25, 2020.

15. Pursuant to Part I, Section B of the Permit, Respondent was to achieve compliance with the final effluent limitations for TP on or before July 1, 2020, and the final report certifying compliance with the final effluent limitations for TP was due to DEQ no later than thirty (30) days following the final compliance date.
16. Respondent failed to submit the final progress report to DEQ certifying that the final effluent limitations for TP were being met in the timeframe required in Part I, Section B of the

Permit. Failure to submit the final progress report to DEQ in the timeframe required by the Permit is a violation of Part I, Section B of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

17. On October 29, 2020, Respondent submitted a progress report to DEQ detailing the progress towards achieving compliance with the final effluent limitations for TP. Respondent's October 29, 2020 progress report stated that Respondent was not yet in compliance with the final effluent limitations for TP. Failure to achieve compliance with the final effluent limitations for TP is a violation of Part I, Section B of the Permit and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

18. On November 10, 2020, DEQ notified Respondent that the following DMRs were missing parameter values:

- a. September 30, 2017 (Total Residual Chlorine);
- b. December 31, 2017 (Total Residual Chlorine);
- c. March 31, 2018 (Total Residual Chlorine);
- d. June 30, 2018 (Total Residual Chlorine);
- e. September 30, 2018 (Total Residual Chlorine); and
- f. February 29, 2020 (Carbonaceous Biochemical Oxygen Demand).

19. On March 10, 2021, DEQ conducted a review of certified DMRs submitted by Respondent in accordance with the Permit.

20. 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 January 31, 2021:

- a. Fifteen (15) violations of Total Phosphorus;

- b. Six (6) violations of Total Suspended Solids;
- c. Four (4) violations of Ammonia Nitrogen;
- d. Four (4) violations of Oil & Grease;
- e. Three (3) violations of Dissolved Oxygen; and
- f. Three (3) violations of Fecal Coliform Bacteria.

21. Each of the thirty-five (35) discharge limitation violations listed in Paragraph 20 above constitutes a separate permit violation for a total of thirty-five (35) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. On March 11, 2021, DEQ sent Respondent a request for a Corrective Action Plan (CAP) to address the effluent violations. The CAP was to have a milestone schedule, a final date of compliance, and be certified by a Professional Engineer licensed in the state of Arkansas.

23. On April 7, 2021, Respondent submitted a CAP with a final compliance date ninety (90) days from the submission date of the CAP.

24. On April 8, 2021, DEQ notified Respondent via letter that the CAP submitted on April 7, 2021, was deemed adequate. DEQ requested that Respondent submit monthly progress reports detailing the progress being made towards achieving final compliance with the Permit effluent limits.

25. On May 10, 2021, Respondent submitted the first monthly report.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit to DEQ, for review and approval, an updated milestone schedule with a specific date of final compliance.

2. Effective immediately and continuing until this Order is closed, Respondent shall submit monthly progress reports detailing the progress that has been made towards compliance with the CAP and Part I, Section B of the Permit. Monthly progress reports shall be submitted to DEQ no later than the 15th of each month.

3. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Dollars (\$5000.00), of which Four Thousand Five Hundred Dollars (\$4500.00) shall be conditionally SUSPENDED and 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 Five Thousand Dollars (\$5000.00) shall be payable immediately to DEQ on demand. Payment of Five Hundred Dollars (\$500.00) 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.

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.

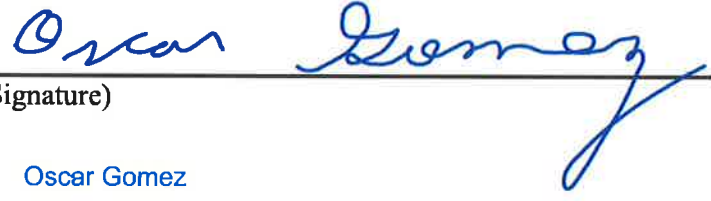
SO ORDERED THIS 17th DAY OF FEBRUARY, 2022



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Faulkner County Public Facility Board d/b/a Preston Community Wastewater Utility

BY: 

(Signature)

Oscar Gomez

(Typed or printed name)

TITLE: Chairman

DATE: February 3, 2022
