

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Shannon Hills  
10401 High Road East  
Shannon Hills, AR 72103

LIS No. 22- 018  
Permit No. AR0050636  
AFIN 63-00856

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 Shannon Hills (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 municipal wastewater treatment facility (“facility”) located at 14801 Glacier, Shannon Hills, Saline County, Arkansas.
2. Respondent discharges treated wastewater via a ten (10) inch force main from the facility to Otter Creek, thence to Fourche Creek, thence to the Arkansas River in Segment 3C of the Arkansas 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 AR0050636 (“Permit”) to Respondent on June 9, 2017. The Permit became effective on August 1, 2017, with a minor modification on August 11, 2017, and expires on July 31, 2022.

10. On January 9, 2020, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address 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.

11. On February 12, 2020, Respondent submitted a CAP to DEQ with a final compliance date of November 25, 2020.

12. On February 14, 2020, DEQ sent Respondent a letter conditionally approving the CAP submitted on January 9, 2020, and requested a new a milestone schedule.

13. On August 18, 2021, DEQ performed an inspection of a lift station due to a sanitary sewer overflow. The inspection revealed the following violations:

a. The following conditions demonstrate that Respondent has not properly operated and maintained the facility in accordance with the requirement set forth in Part II Section B Condition 1.a of the Permit:

- (1) There was a buildup of solids at the top of the wet well.
- (2) The lift station high level alarm light was removed from operation.
- (3) Lift station displayed signs of overflow.

14. On August 20, 2021, DEQ sent Respondent an email informing Respondent that DEQ observed evidence of Sanitary Sewer Overflows (SSOs) at a lift station and requested a CAP to address the SSOs. The email also instructed Respondent to report the SSO to DEQ immediately.

15. On August 23, 2021, Respondent reported to DEQ that the SSO had reported and that Respondent was working to replace grinder pumps in the area where the SSOs occurred.

16. On October 13, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

17. 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 August 1, 2018, through August 31, 2021:

- a. Twenty-seven (27) violations of Ammonia Nitrogen;
- b. Seven (7) violations of violations of Total Suspended Solids; and
- c. Two (2) violations of for Fecal Coliform Bacteria.

18. Each of the thirty-six (36) discharge limitation violations listed in Paragraph 17 above constitutes a separate permit violation for a total of thirty-six (36) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

19. The review also revealed that Respondent failed to submit Noncompliance Reports (NCRs) for the violations of the permitted effluent discharge limits reported from August 1, 2018, through August 31, 2021, as required by Part III, Section D, Condition 7 of the Permit. Respondent's failure to submit NCRs is a violation of Part III, Section D, Condition 7 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

20. The review further revealed that Respondent reported a design flow greater than the permitted flow of 0.641 million gallons per day during the following monitoring periods:

- a. 2018: August, September, October, November, and December;
- b. 2019: January, March, April, May, June, July, October, November, and December;
- c. 2020: January, February, March, April, May, June, September, November and December; and
- d. 2021: January, March, April, May, June and July.

21. DEQ also conducted a review of the SSOs reported by Respondent in accordance with the Permit for the period of August 1, 2018, through October 13, 2021. The review revealed that Respondent reported six (6) SSOs, totaling approximately 3135 gallons. Respondent is permitted to discharge treated municipal wastewater from the permitted outfall at 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 therefore violated Ark. Code Ann. § 8-4-217(a)(3).

22. On October 21, 2021, DEQ sent a copy of the August 18, 2021 inspection report to Respondent.

23. On November 10, 2021, Respondent and DEQ meet to discuss SSOs, effluent violations, improvements to the facility, and the renewal permit application that is due to DEQ by February 1, 2022.

24. On December 7, 2021, Respondent provided an update on the deliverables discussed in the November 10, 2021 meeting. Respondent's update did not include the requested CAP with a milestone schedule.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive CAP developed by a Professional Engineer (P.E.) licensed in the state of Arkansas. The CAP shall include, at minimum, the methods and best available technologies that will be used to correct the violations listed in Findings of Fact, address the exceedances of the treatment system design flow, and prevent future violations and include a reasonable milestone schedule with a date of final compliance no

later than December 31, 2023. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2023, contained in the approved CAP. The milestone schedule and final compliance date 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 by December 31, 2023.

3. On or before the effective date of this Order, Respondent shall submit to DEQ the NCRs referenced in Finding of Fact Paragraph 19, and Respondent shall submit a NCR for every monitoring period during which any violation of the permitted effluent discharge limitations is reported.

4. Within twelve (12) months of the effective date of this Order, Respondent shall develop and submit to DEQ for review and approval a Sewer System Evaluation Study (SSES) for its sanitary sewer collection system. The SSES must be certified by a P.E. licensed in the state of Arkansas.

a. The SSES should at minimum have the following elements:

- i. Perform smoke testing in all areas of the collection system, beginning with highest priority areas;
- ii. Perform televising of lines in areas deemed necessary based on smoke testing in order to locate leaks and to determine method of repair;

- iii. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
- iv. Develop a manhole inspection program, beginning in highest priority area; and
- v. Recommend a method of repair and develop a cost estimate for such. Based on the results of the above studies, Respondent will be able to identify areas requiring improvements and to prioritize those improvements. Respondent shall evaluate short-term and long-term improvements to remedy deficiencies.

b. The SSES shall include a SSO Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective actions fully and expeditiously. Upon approval by DEQ, the SSO Plan and milestone schedule shall be incorporated into this Order by reference and become fully enforceable as terms of this Order.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Five Thousand Two Hundred Dollars (\$5200.00), or one-half of the full civil penalty of Two Thousand Six Hundred Dollars (\$2600.00) 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

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. 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.

13. The City Council of Respondent has authorized the Mayor and City Clerk/Treasurer to sign this Order on behalf of Respondent. See Exhibit A.

14. 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 1<sup>ST</sup> DAY OF MARCH, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Shannon Hills

BY:   
\_\_\_\_\_  
(Signature)

MIKE KEMP  
\_\_\_\_\_  
(Typed or printed name)

TITLE: MAYOR  
\_\_\_\_\_

DATE: 2/15/2022  
\_\_\_\_\_

# RESOLUTION 2022-03

## A RESOLUTION AUTHORIZING THE CITY OF SHANNON HILLS TO ENTER INTO A PROPOSED CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

**Whereas:** it is in the city's best interest to enter into an agreement with the Arkansas Department of Environmental Quality and resolve the ongoing wastewater issues listed in the proposed Consent Administrative Order.

**Whereas:** the Mayor and Public Works Director working with the Engineer have developed a plan of action in regards to the issues listed in the proposed Consent Administrative Order.

**Whereas:** the City Council authorizes the Mayor or Treasurer to sign this proposed Consent Administrative Order on behalf of the City of Shannon Hills.

**Whereas:** the City Council of the City of Shannon Hills authorizes the Mayor and Treasurer to expend funds for compliance activities required by this proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in this this proposed Consent Administrative Order.

Adopted on this 15<sup>th</sup> day of February, 2022

  
Mayor-Mike Kemp

  
Recorder-Robin Baker

