

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Booneville
232 North Kennedy
Booneville, AR 72927

LIS No. 22- 020
Permit No. AR0021571
AFIN 42-00030

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 Booneville (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 610 East Rosedale Circle, Booneville, Logan County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Booneville Creek, thence to Booneville Creek, thence to the Petit Jean River, thence to the Arkansas River in Segment 3G 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 AR0021571 (“Permit”) to Respondent on May 31, 2018. The Permit became effective on June 1, 2018, and expires on May 31, 2023.

10. On May 25, 2017, DEQ performed a review of the Sanitary Sewer Overflows (SSOs) reported by Respondent during the period of May 1, 2013, through March 31, 2017. Respondent reported 172 SSOs totaling approximately 969,000 gallons during the review period. 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 is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

11. On May 26, 2017, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) be submitted to DEQ to address the SSOs. 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.

12. On June 21, 2017, DEQ received a CAP from Respondent with a milestone schedule and a final date of compliance of March 15, 2020.

13. From December 1, 2017, through August 31, 2021, Respondent submitted quarterly progress reports detailing the work completed to address the SSO violations. The work included smoke testing, closed circuit television analysis, manhole repair and replacement, and pipe bursting, as well as other actions.

14. On July 1, 2021, DEQ performed a follow-up review of the SSOs reported by Respondent from April 1, 2017, through June 30, 2021. The review revealed Respondent reported 339 SSOs totaling approximately 3.25 million gallons during the review period. 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 is a violation of Ark. Code Ann. § 8-4-217(b)(1)(E) and is therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

15. On July 2, 2021, DEQ sent Respondent an email requesting an updated CAP with a revised milestone schedule and final date of compliance be submitted to DEQ. The email also requested a map of the collection system, a summary of the corrective actions performed thus far, the root cause of the SSOs, and an analysis of the seven (7) areas where recurring SSOs were reported.
16. On July 26, 2021, DEQ and Respondent met to discuss the increase in SSOs and anticipated actions moving forward.
17. On July 26, 2021, DEQ received a map of the Booneville collection system.
18. On August 16, 2021, DEQ received a revised CAP with an updated milestone schedule and an updated final compliance date of January 31, 2028.
19. On September 8, 2021, DEQ notified Respondent via email that the revised milestone schedule submitted on August 16, 2021, did not provide sufficient detail.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. 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. Develop a plan to address deficiencies through rehabilitation, repair, or replacement;
 - ii. Develop a manhole inspection program, beginning in highest priority area; and
 - iii. 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 prioritize those improvements. Short-term and long-term improvements must be considered to determine the remedy for the identified deficiencies.

b. The SSES shall include a SSO Plan with a milestone schedule that details the steps Respondent shall take to implement the corrective action 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.

2. Within three (3) months of submitting the SSES, Respondent shall submit a Sanitary Sewer Rehabilitation Plan (SSRP) to DEQ for review and approval. The SSRP shall address the deficiencies identified by the SSES, detail the actions to be taken to eliminate peak flows caused by inflow and infiltration, and establish steps necessary to repair or replace equipment deficiencies. This plan shall at a minimum include the following items:

- a. Corrective actions to address the deficiencies of all wastewater collection lines, mains, and pump stations that cannot carry peak hydraulic loads caused by inflow and infiltration;
- b. Corrective actions to address all pump stations that do not have auxiliary power or sufficient storage as required by Part II, Section B, Condition 7 of the Permit and identify all pump stations that do not have direct notification alarms;
- c. Corrective actions to address manhole deficiencies including location mapping and remediation or replacement to reduce inflow and infiltration at municipal manhole locations;
- d. A milestone schedule including dates when the deficiencies identified by the SSES and the items listed in a through c of this paragraph will be completed.

3. Upon approval by DEQ, the SSRP, milestone schedule, and the SSRP final compliance date of January 31, 2028, shall be fully enforceable as terms of this Order.

4. 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 through elimination of SSOs. Respondent shall submit the final compliance report stamped by a P.E. licensed by the state of Arkansas by January 31, 2028. The report shall include a certification that all milestones and work defined by the SSRP has been completed, and include a detailed ten-year plan for ongoing preventive evaluation, replacement, and repair of the collection system.

5. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to complete the actions defined in paragraphs 1 through 5 of the Order and Agreement section of this Order, and pay a civil penalty of Four Thousand Two Hundred Dollars (\$4200.00), or one-half of the full civil penalty of Two Thousand One Hundred Dollars (\$2100.00) 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 8~~th~~ DAY OF March, 2022.



JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Booneville

BY: 

(Signature)

Jerry Wilkins

(Typed or printed name)

TITLE: Mayor

DATE: 3-2-2022

RESOLUTION NO. 22-2

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A CONSENT ADMINISTRATIVE ORDER WITH THE DEPARTMENT OF ENERGY AND ENVIRONMENT DIVISION OF ENVIRONMENTAL QUALITY AND FOR PAYMENT OF FINE.

WHEREAS, on or about May 26, 2017 the Division of Environment Quality (DEQ) of the Arkansas Department of Energy and Environment Division of Environmental Quality after review found the City of Booneville to be in violation of Arkansas Code Ann. Section 8-4-217(b)(1)(E) 172 times for Sanitary Sewer Overflows (SSOs) which is therefore a violation of Ark. Code Ann. Section 8-4-(a)(3).

WHEREAS, the City of Booneville submitted a Correction Action Plan on June 21, 2017 to the DEQ with a correction schedule and a final date of compliance of March 15, 2020.

WHEREAS, DEQ performed a follow-up review on July 1, 2021 and found the City of Booneville in violation of Ark. Code Ann. Section 8-4-217(B)(1)(E) 339 times for SSOs and therefore in violation of Ark. Code Ann. Section 8-4-217 (a)(3).

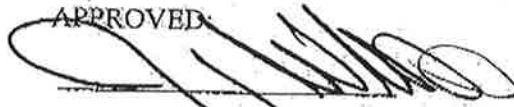
WHEREAS, DEQ sent a proposed Consent Administrative Order to the City of Booneville on February 1, 2022, to ensure the City's compliance with the Arkansas law and assessing a fine of \$2,100.00 for all violations to date.

NOW THEREFORE, BE IT RESOLVED by the City Council of Booneville, Arkansas, as follows:

1. That the Mayor and the City Clerk be, and hereby are authorized to sign the Consent Administrative Order for the purposes of compliance with Arkansas law.
2. That the City Clerk is authorized to issue a check to DEQ in the amount of \$2,100.00 as settlement of all fines due for violations of the Arkansas Water and Air Pollution Control Act.


PASSED AND APPROVED by a majority of the City Council this 28 day of February, 2022.

APPROVED:



Jerry Wilkins, Mayor

ATTEST:



Gaylene West, City Clerk