

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Tri-City Utilities, Inc.  
P.O. Box 97  
O’Kean, AR 72449

LIS No. 22- **025**  
Permit No. AR0043486  
AFIN 61-00072

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 Tri-City Utilities, Inc. (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 151 Poplar Street, O’Kean, Randolph County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary of Beaver Dam Ditch, thence to Beaver Dam Ditch, thence to the Cache River, thence to the White River in Segment 4B of the White 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 AR0043486 (“Permit”) to Respondent on April 25, 2014. The Permit became effective on May 1, 2014, and expired on April 30, 2019. The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on October 10, 2019, with an effective date of November 1, 2019, and an expiration date of October 31, 2024.

10. On December 11, 2017, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the thirty-nine (39) violations of the permitted effluent discharge limitations reported from February 1, 2015, through October 31, 2017. The parameters with reported violations included Ammonia Nitrogen, Carbonaceous Biochemical Oxygen Demand, Dissolved Oxygen, and Total Suspended Solids. 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.

11. On January 11, 2018, Respondent submitted a CAP to DEQ with a final compliance date of July 31, 2018. The CAP indicated that lift station pumps in the Town of O’Kean, the Town of Delaplaine, and the City of Peach Orchard would be replaced in November 2018.

12. Respondent has submitted progress report updates from 2018 through 2021 detailing the actions taken to achieve compliance. However, Respondent continues to report violations of the permitted effluent discharge limitations past the original final compliance date of July 31, 2018. The progress reports indicate that the three cities serviced by the facility are experiencing leaks within their collection systems.

13. On October 28, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

14. 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 November 1, 2017, through September 30, 2021:

- a. Thirty-two (32) violations of Ammonia Nitrogen;
- b. Eight (8) violations of Dissolved Oxygen;
- c. Four (4) violations of Total Suspended Solids;

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d. Two (2) violations of Fecal Coliform Bacteria; and

e. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

15. Each of the forty-seven (47) discharge limitation violations listed in Paragraph 14 above constitutes a separate permit violation for a total of forty-seven (47) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

16. On October 29, 2021, DEQ sent Respondent a letter requesting a Revised CAP (RCAP) to address the violations of the permitted effluent discharge limitations. The RCAP was to have a milestone schedule, a final date of compliance, and be certified by a P.E. licensed in the state of Arkansas. The RCAP was due to DEQ by November 29, 2021.

17. On November 15, 2021, DEQ conducted a review of sanitary sewer overflows (SSOs) reported by Respondent in accordance with the Permit for the period of December 1, 2018, through November 15, 2021. The review revealed that Respondent reported twenty-six (26) SSOs. 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).

18. On November 29, 2021, Respondent submitted a RCAP with a final compliance date of October 2022.

19. On December 1, 2021, DEQ notified Respondent the RCAP was deemed adequate. DEQ requested Respondent submit quarterly progress reports detailing the corrective actions taken to achieve compliance.

20. On March 8, 2022, Respondent submitted a RCAP with a final compliance date of December 31, 2024.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date of December 31, 2024, contained in the approved RCAP submitted on March 7, 2022. The milestone schedule and final compliance date of December 31, 2024, 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, 2024.

3. Within two hundred and seventy (270) calendar days 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. Short-term and long-term improvements will be considered to remedy deficiencies.

b. The SSES shall include an 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 the terms of this Order.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Nine Thousand Six Hundred Dollars (\$9600.00), of which Eight Thousand Six Hundred Dollars (\$8600.00) shall be conditionally SUSPENDED by DEQ. The allowance of a conditional suspension is based upon DEQ's primary goal of regulatory compliance and Respondent's current efforts to obtain compliance. If Respondent fully complies with this Order, the suspended civil penalty of Eight Thousand Six Hundred Dollars (\$8600.00) shall be 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 Nine Thousand Six Hundred Dollars (\$9600.00) shall be payable immediately to DEQ. Payment of the civil penalty in the amount of One Thousand Dollars (\$1000.00) 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 to the extent permitted by law.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.



10. 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.

11. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer 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 10th DAY OF March, 2022.

  
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JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Tri-City Utilities, Inc.

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

Wiley Watson  
\_\_\_\_\_  
(Typed or printed name)

TITLE: President Tri-City Utilities

DATE: 3/8/2022