

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Mountainburg  
P.O. Box 433  
Mountainburg, AR 72946

LIS No. ~~21-22-026~~  
Permit No. AR0021512  
AFIN 17-00060

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 Mountainburg (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 on Silver Bridge Road, Mountainburg, Crawford County, Arkansas, approximately half a mile southwest of the junction of AR State Highway 282 and U.S. Highway 71.

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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.

2. Respondent discharges treated wastewater to an unnamed tributary of Pigeon Creek, thence to Pigeon Creek, thence to Frog Bayou, thence to the Arkansas River in Segment 3H 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 AR0021512 (“Permit”) to Respondent on December 12, 2014. The Permit became effective on January 1, 2015, and expired on December 31, 2019.

The Permit was administratively continued pursuant to APC&EC Rule 6.201 until DEQ issued the renewal Permit on November 30, 2020, with an effective date of December 1, 2020, and an expiration date of April 30, 2025.

10. On October 25, 2019, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address repeated effluent violations. The CAP was to have a milestone schedule and final date of compliance.

11. On December 13, 2019, Respondent submitted a CAP to address the effluent violations.

12. On December 18, 2019, DEQ sent a letter approving the CAP submitted on December 13, 2019, with the following stipulations:

- a. Specify what process control measures have been taken as a result of the Environmental Protection Agency (EPA) webinar;
- b. Provide a description of the type of testing equipment purchased and its purpose; and
- c. Submit the proposed plan for the addition of two (2) valves in the wastewater pond.

13. On January 16, 2020, Respondent submitted the additional information requested by DEQ on December 18, 2019.

14. On February 11, 2020, DEQ sent a letter to Respondent deeming the additional information submitted on January 16, 2020, adequate with the following comments:

- a. Please be advised that pursuant to [Rule] 6.202(A), “Any person who desires to construct, operate or modify any disposal system which will discharge to the waters of the State... shall submit an application for a permit for such activity.”

- b. Please submit quarterly reports detailing the progress Respondent has made in achieving final compliance with permit limits. The first quarterly report is due by April 10, 2020.
- c. The Circuit Rider site-visit is scheduled for February 24, 2020.

15. On February 24, 2020, DEQ conducted a compliance evaluation inspection of the facility. The inspection consisted of a review of available records and an evaluation of the existing treatment facility. The inspection report noted that Respondent was participating in EPA's Circuit Rider Assistance Program and that PG Environmental was assisting Respondent with the development of a compliance plan.

16. On March 20, 2020, Respondent submitted a progress report detailing the actions taken towards achieving final compliance. Respondent stated they were waiting to receive the compliance plan from the EPA Circuit Rider site-visit on February 24, 2020.

17. On April 22, 2020, the EPA submitted the initial draft of Respondent's compliance plan developed under EPA's Circuit Rider Assistance Program.

18. On September 28, 2020; February 3, 2021; April 14, 2021; July 12, 2021; and July 15, 2021, Respondent submitted progress reports detailing the actions taken to achieve final compliance with the permitted effluent discharge limitations.

19. On August 5, 2021, PG Environmental submitted the final recommendations report developed under EPA Circuit Rider Assistance Program. The report addressed multiple areas of concern related to excessive inflow and infiltration (I/I) and repairs needed to be made to the facility.

20. On September 22, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.

21. 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. Fifty-one (51) violations of Ammonia Nitrogen;
- b. Eight (8) violations of Total Suspended Solids;
- c. Two (2) violation of Dissolved Oxygen; and
- d. One (1) violation of Carbonaceous Biochemical Oxygen Demand.

22. Each of the sixty-two (62) discharge limitation violations listed in Paragraph 21 above constitutes a separate permit violation for a total of sixty-two (62) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. The review of the DMRs also revealed that Respondent failed to submit Non-compliance Reports (NCR) for the following monitoring periods:

- a. January 2021;
- b. March 2021;
- c. July 2021; and
- d. August 2021.

The 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).

24. DEQ conducted a review of the Sanitary Sewer Overflow (SSOs) reported by Respondent in accordance with the Permit for the period of January 1, 2020, through June 30, 2021. The review revealed that Respondent reported two (2) SSOs. Respondent is permitted to discharge

treated municipal wastewater from its permitted Outfall. 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 Ark. Code Ann. § 8-4-217(a)(1) and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

### **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 Paragraph 21 and prevent future violations and include a reasonable milestone schedule with a date of final compliance. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date 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 effective date of this Order, Respondent shall submit NCRs for the violations reported in the monitoring periods of January 2021, March 2021, July 2021, and August 2021.
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 final permitted effluent limits set forth in Part I, Section A of the Permit. Respondent shall submit a certification of compliance from a P.E. licensed in the state of Arkansas stating

that the corrective actions listed in the approved CAP have been completed and that Respondent is in compliance with the Permit.

4. Respondent shall submit all NCRs in accordance with Part III, Section D.7 of the Permit.

5. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit to DEQ, for review and approval, a comprehensive Sanitary Sewer Flow Monitoring and Infiltration and Inflow Study (“Study”) developed by a Professional Engineer licensed in the state of Arkansas. The Study shall include, at minimum, a baseline for sanitary sewer flows, rainfall monitoring, an estimate of available sewer capacity, identification of sources of I/I, an estimation of I/I, and a plan and milestone schedule for reducing I/I with a date of final compliance. The Study shall detail the methods and best available technologies that will be used to correct the I/I violations listed in Findings of Fact Paragraph 24 and prevent future violations. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date. The milestone schedule and final compliance date shall be fully enforceable as terms of this Order.

6. In compromise and full settlement of the violations specified in the Findings of Fact Respondent agrees to pay a civil penalty of Two Thousand Eight Hundred Dollars (\$2,800.00), of which Two Thousand Eight Hundred Dollars (\$2,800.00) 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 Two Thousand Eight Hundred Dollars (\$2,800.00) 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 Two Thousand Eight Hundred Dollars

(\$2,800.00) shall be payable immediately to DEQ. 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.

7. 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.

8. 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.



9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

15. 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<sup>th</sup> DAY OF March, ~~2021~~ 2022

  
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Mountainburg

BY:   
(Signature)

Susan Wilson  
(Typed or printed name)

TITLE: Mayor

DATE: 12-28-21

RESOLUTION NO. 2022-005

A RESOLUTION AUTHORIZING THE CITY OF Mountainburg TO ENTER INTO A CONSENT ADMINISTRATIVE ORDER WITH THE ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

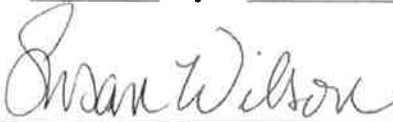
*WHEREAS, it is in the City's best interest to enter into an agreement with DEQ and resolve the violations of the Arkansas Water and Air Pollution Control Act listed in the proposed Consent Administrative Order.*

*WHEREAS, the Mayor and Public Works Director or other designated person, working with a Professional Engineer, have developed a plan of action to address the issues listed in the proposed Consent Administrative Order.*

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF Mountainburg:**

- 1. The proposed Consent Administrative Order has been reviewed and approved by the City Council in a duly convened meeting with a quorum present.*
- 2. The City Council of the City of Mountainburg authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Mountainburg authorizes the Mayor and treasurer to expend funds for compliance activities required by the proposed Consent Administrative Order including but not limited to the payment of a civil penalty as set forth in the proposed Consent Administrative Order.*

Adopted on this 14 day of March, 2022

APPROVED:   
Mayor

ATTEST:   
City Clerk