

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Dyess
103 Center Drive
Dyess, AR 72330

LIS No. 22- **028**
Permit No. AR0039047
AFIN 47-00139

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 Dyess (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 on Third Street, Dyess, Mississippi County, Arkansas.
2. Respondent discharges treated wastewater to the Tyronza River, then to the St. Francis River in Segment 5A of the St. Francis River Basin.
3. Respondent is regulated pursuant to the National Pollutant Discharge Elimination System (NPDES).

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.

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 AR0039047 (“Permit”) to Respondent on October 13, 2015. The Permit became effective on November 1, 2015, and expired on October 31, 2020. The Permit was administratively continued until DEQ issued the renewal Permit on June 18, 2021, with an effective date of July 1, 2021, and an expiration date of June 30, 2026.

10. On July 10, 2018, DEQ sent Respondent a letter requesting a Corrective Action Plan (CAP) to address the violations of the permitted effluent discharge limitations reported from May 2015 through May 2018. Respondent did not submit the requested CAP to DEQ.

11. On March 7, 2019, DEQ sent Respondent another letter requesting a CAP to address the violations of the permitted effluent discharge limitations reported from May 2018 through March 2019. The CAP was to have a milestone schedule with a final compliance date no later than March 31, 2020, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.
12. On March 28, 2019, Respondent submitted a CAP to DEQ. The CAP had a final compliance date of May 1, 2019.
13. On April 17, 2019, DEQ notified Respondent that the CAP dated March 28, 2019, was deemed adequate. DEQ requested that Respondent submit quarterly progress reports.
14. On July 10, 2019, Respondent submitted a progress report detailing the actions taken towards achieving final compliance with the permitted effluent discharge limitations. The progress report contained a new final compliance date of September 1, 2019.
15. On September 20, 2019, DEQ sent Respondent a letter requesting a Revised CAP to address the violations of the permitted effluent discharge limitations reported from January 2018 through August 2019. The CAP was to have a milestone schedule with a final compliance date no later than October 31, 2020, and be certified by a P.E. licensed in the state of Arkansas. Respondent did not submit the requested Revised CAP to DEQ..
16. On May 15, 2020, the Environmental Protection Agency (EPA) submitted the initial draft of Respondent's compliance plan developed under U.S. EPA's Circuit Rider Assistance Program.
17. On June 9, 2021, Respondent submitted an update to the EPA Circuit Rider Assistance Program and the corrective actions that have been taken to achieve final compliance.

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

19. 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 May 1, 2015, through August 31, 2021:

- a. Eighteen (18) violations of Total Suspended Solids;
- b. Four (4) violations of Fecal Coliform Bacteria;
- c. Three (3) violations of Carbonaceous Biochemical Oxygen Demand; and
- d. One (1) violation of pH.

20. Each of the twenty-six (26) discharge limitation violations listed in Paragraph 19 above constitutes a separate permit violation for a total of twenty-six (26) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

21. The review also revealed that Respondent reported a flow greater than their permitted design flow of 0.06 million gallons per day (MGD) eighty-five (85) times during the May 1, 2015, through August 31, 2021 review period.

22. On October 25, 2021, DEQ and Respondent met to discuss the repeated effluent violations and EPA's Circuit Rider Assistance Program.

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 Revised CAP developed by a P.E. licensed in the state of Arkansas. The Revised 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 19 and prevent future violations, and it shall 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 the approved Revised 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 a certification of compliance from a P.E. licensed in the state of Arkansas, stating that the corrective actions listed in the Revised CAP have been completed and that Respondent is in compliance with the Permit.

3. 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 (I/I) Study ("Study") developed by a P.E. 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. Upon review and approval by DEQ, Respondent shall comply with the terms, milestone schedule, and final compliance date in the Study. The milestone schedule and final compliance date shall be fully enforceable as 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 Four Thousand Eight Hundred Dollars (\$4800.00), of

which Four Thousand Eight Hundred Dollars (\$4800.00) 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 participation in the EPA Circuit Rider Program. If Respondent fully complies with this Order, the suspended civil penalty of Four Thousand Eight Hundred Dollars (\$4800.00) shall be DISMISSED by DEQ. The suspension and subsequent 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 Four Thousand Eight Hundred Dollars (\$4800.00) shall be payable to DEQ on demand. 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.

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. 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.

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

13. 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 10th DAY OF March, 2022.

Julie Linck
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Dyess

BY: [Signature]
(Signature)

Mark Wroten
(Typed or printed name)

TITLE: Mayor

DATE: 3/4/22

City of Dyess

Regular Meeting at 7:00 P.M. held in the Conference Room of the Administration Building

February 15, 2022

Mayor Mark Wroten—Present

Rodney Sparks—Present

Candice Baker—Present

George Wroten—Present

Willie Reavis—Present

Jeff Long—Present

Mariea Reavis— Present

The meeting was called to order by Mayor Mark Wroten.

Mariea Reavis calls roll.

George Wroten motion approve minutes for December 2021 to be approved, Candice Baker 2nd the motion. All agree. No further discussion.

Mariea Reavis goes over February bank statements.

Act 833 February with \$6565.90, no discussion. Admin in February with \$306.71, Community Center in February with \$326.82, Fire in February with \$1,352.56, LOPFI in February with \$3,634.44, Meter Deposit in February with \$1872.32. O&M in February with -\$1023.45, Police in February with \$3,612.92 short lived in February \$35,959.80 Street in February \$4,473.68, Tax Act February \$78.67, Town in February n \$34,343.14.

George Wroten motion to accept February bank statements Candice Baker 2nd the motion to accept December bank statements, all agree, no further discussion.

We go over the budget for 2021.

George Wroten motion to amend Town income \$132735.92, Jeff Long 2nd. Rodney motion to amend Town expense \$97854.93, George Wroten 2nd. George Wroten motion to amend O&M income \$121020.43, Candice Baker 2nd. Candice Baker motion to amend O&M expense \$128022.47, George Wroten 2nd. George Wroten motion to amend Street income \$35762.82, Willie Reavis 2nd. George Wroten motion to amend Street expense \$41806.39, Candice Baker 2nd.

George Wroten motion to accept 2021 budget with adjustments, Jeff Long 2nd.

Mark Wroten goes over CAO review.

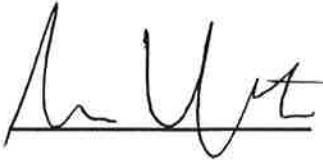
George Wroten motions to accept the CAO, Rodney Sparks 2nd.

Rodney Sparks motions to accept Robert Wards water bill adjustment by \$61.75 due to leak, George Wroten 2nd.

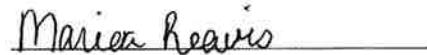
Fire Dept.- get list of equipment, give to Jon Milligan and Johnny Rye

Legion- Gerold Dobbins and Lori Rowland may tear it down

George Wroten motion to adjourn meeting, Willie Reavis 2nd the motion, all agree, no further discussion. Meeting adjourned.

A handwritten signature in dark ink, appearing to read 'G. Wroten', written over a horizontal line.

Mayor

A handwritten signature in dark ink, appearing to read 'Marion Reavis', written over a horizontal line.

Treasurer/Recorder