

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Acme Brick Company
3024 Acme Brick Plaza
Fort Worth, TX 76109

LIS No. 22- **036**
Permit No. AR0043354
AFIN 30-00008

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 Acme Brick Company (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 minor industrial wastewater treatment facility (“facility”) located at 22436 US Hwy 67 North, Malvern, Hot Spring County, Arkansas.
2. Respondent discharges treated wastewater to an unnamed tributary, thence to Town Creek, Thence to Chatman Creek, thence to the Ouachita River in Segment 2F of the Ouachita 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 AR0043354 (“Permit”) to Respondent on July 26, 2016. The Permit became effective on August 1, 2016. A complete renewal application was received on February 1, 2021, and the Permit was administratively continued on July 31, 2021, in accordance with APC&EC Rule No. 6.201.

10. On August 10, 2018, DEQ conducted a review of the Bypass Reports submitted by Respondent in accordance with the Permit. The review revealed that Respondent reported three (3) bypasses of the wastewater treatment facility during the period August 1, 2015, through July 31, 2018 on the following dates:

- a. March 9 through May 14, 2016;
- b. May 3, 2017; and
- c. February 22, 2018, for an unknown duration.²

11. DEQ reviewed Respondent's notifications for these bypasses. Respondent did not provide information about the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypasses.

12. Each bypass listed in Paragraph 10 above constitutes a separate violation of Part III, Section B, Condition 4.C of the Permit for a total of three (3) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

13. On August 10, 2018, DEQ requested that Respondent submit a Corrective Action Plan (CAP) to address and prevent future bypasses. The CAP was to include a milestone schedule, final date of compliance, and be certified by a Professional Engineer (P.E.) licensed in the state of Arkansas.

14. On November 30, 2018, DEQ received a CAP from Respondent.

15. On December 10, 2018, Respondent notified DEQ that a bypass of the treatment facility began on December 9, 2018. Respondent's notification did not provide information about steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. This bypass

² Respondent sent a notification to DEQ via certified mail stating that an unintended bypass began on February 22, 2018, and that Respondent would provide written notification once the bypass condition ended. DEQ does not have a record of Respondent making a written notification of the end of the bypass condition.

constitutes a violation of Part III, Section B, Condition 4.C of the Permit and therefore a violation of Ark. Code Ann. § 8-4-217(a)(3).

16. On February 21, 2019, DEQ requested an update and revision to the CAP submitted on November 30, 2018.

17. On March 8, 2019, DEQ received a revised CAP from Respondent.

18. On March 27, 2019, DEQ requested additional information about the equipment, flow rates, and chemicals referenced in the CAP submitted on March 8, 2019.

19. On June 25, 2019, DEQ received additional technical details from Respondent in response to DEQ's March 27, 2019 letter. Respondent outlined the process planned for the use of a temporary treatment and bypass method while the CAP milestones are being completed.

20. On August 13, 2019, DEQ informed Respondent that Respondent's CAP, including the additional technical details received on June 25, 2019, would be adequate with the following stipulations:

1. The use of spent lime is not approved at this time.
2. New hydrated lime would be an acceptable method.
3. Any new construction or modification would require submission of the applicable permit application at least 180 days in advance of project commencement.
4. Maintenance and refurbishment of existing structures would typically not require a new permit.
5. A revised milestone schedule and final compliance date should be submitted for final approval by August 31, 2019.

6. Progress reports should be submitted each calendar quarter until final compliance is achieved.
 7. A final compliance report stamped by a Professional Engineer licensed in the state of Arkansas shall be submitted no later than the final compliance date in the milestone schedule referenced in condition 5. The report, at minimum shall certify all milestones have been completed and the facility, with normal operation and maintenance, should remain in compliance with the Permit.
21. On August 16, 2019, Respondent responded to DEQ's August 13, 2019 correspondence. Respondent requested clarification from DEQ and that the revised milestone schedule due date be extended to September 30, 2019.
 22. On August 19, 2019, DEQ sent Respondent a response to Respondent's August 16, 2019 request. DEQ approved Respondent's request to change the revised milestone schedule and final compliance date submittal date from August 31, 2019 to September 30, 2019.
 23. On October 1, 2019, DEQ received a revised milestone schedule with a final compliance date of January 31, 2023, from Respondent.
 24. On June 21, 2021, Respondent requested a meeting with DEQ.
 25. On July 19, 2021, DEQ, Respondent, and Respondent's consultant met to discuss the status of the CAP milestones. Due to material delays, scheduling difficulties, and underestimated project costs related to the Covid-19 pandemic, Respondent requested to amend the milestone schedule to allow rehabilitation of one wetland cell per year versus the planned completion of two wetland cell rehabilitations during 2021. DEQ and Respondent agreed that on or before August 6, 2021, a revised CAP and milestone schedule was to be submitted by Respondent.

26. On July 30, 2021, DEQ received Respondent's revised CAP and milestone schedule with a final compliance date of January 31, 2025.
27. On October 28, 2021, DEQ approved Respondent's July 30, 2021 CAP, milestone schedule, final compliance date of January 31, 2025.
28. On November 30, 2021, DEQ conducted a review of certified Discharge Monitoring Reports (DMRs) submitted by Respondent in accordance with the Permit.
29. The review of the DMRs also revealed that Respondent failed to conduct analysis for the following monitoring period end dates: June 30, 2018, and May 31, 2020. Respondent's failure to conduct analysis violated Part I, Section A of the Permit and therefore violated Ark. Code Ann. § 8-4-217(a)(3).

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Respondent shall comply with the terms, milestone schedule, and final compliance date in the approved CAP and milestone schedule submitted to DEQ on July 30, 2021. 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 Permit. On or before January 31, 2025, Respondent shall submit a final compliance report stamped by a Professional Engineer licensed by the State of Arkansas detailing the work completed, certifying all requirements of the CAP have been met, and the facility is operating within compliance of the Permit on the date of final compliance.

3. In addition to the notice requirements set forth in Part III, Section B, Condition 4.B of the Permit, during the period Respondent is implementing the approved CAP, Respondent shall also implement the approved temporary bypass process and shall document the volume and duration of all bypasses and conduct sampling and analysis representative of the volume and nature of the combined effluent discharge from outfall 003-C in accordance with the following:

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>		<u>Monitoring Requirements</u>	
	Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max		
Duration Flow	Start Time and Date	End Time and Date	Per Bypass	DD:HH:MM MMM/DD/YYYY
	Report, MGD	Report, MGD	Daily per Bypass	Instantaneous
Total Volume	Report, Total Bypass Volume in MG	NA	Per Bypass	Cumulative
Total Suspended Solids (TSS)	Report	Report	Per Bypass, 2	Grab
Total Dissolved Solids (TDS)	Report	Report	Per Bypass, 2	Grab
Sulfates (SO4)	Report	Report	1, 2	Grab
Total Aluminum ³	Report	0.75	1, 2	Grab
Total Iron ³	Report	1	1, 2	Grab
pH	<u>Minimum</u> 6.0 s.u.	<u>Maximum</u> 9.0 s.u.	Per Bypass	Grab
There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen as defined in Part IV of NPDES Permit AR0043354.				
Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge during the entire bypass period.				
1. Within 4 hours of start of 1st bypass to occur in each calendar quarter.				
2. A minimum of once every 96 hours of any continuous bypass period lasting more than 48 hours.				
3. Values are Benchmark Parameters not effluent limits.				

The volume, duration, and sampling analysis results for all bypasses during the quarterly reporting periods shall be submitted to DEQ with the quarterly reports on a monitoring report which DEQ shall provide.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Seven Thousand Dollars (\$7000.00), or one-half of the full civil penalty of Three Thousand Five Hundred Dollars (\$3500.00) 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. Even if the conditions for receiving a reduced penalty of Three Thousand Five Hundred Dollars (\$3500.00) have been met, failure to otherwise comply with this Order will result in the penalty reverting to the full civil penalty of Seven Thousand Dollars (\$7000.00) and shall become due immediately and payable to DEQ. 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.

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 21st DAY OF March, 2022.

Julie Linck
JULIE LINCK, CHIEF ADMINISTRATOR, ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

Acme Brick Company

BY: Ed Watson
(Signature)

Ed Watson
(Typed or printed name)

TITLE: EVP Operations

DATE: March 8, 2022