

ARKANSAS DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

City of Melbourne  
P.O. Box 800  
Melbourne, AR 72556

LIS No. ~~21~~ 22-043  
Permit No. 5081-WR-1  
AFIN 33-00026

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order ("Order") is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act ("the Act"), Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the 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 Melbourne (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 municipal land application sites ("site") located in IZARD County, Arkansas<sup>2</sup>.
2. Respondent is regulated pursuant to the Arkansas Water and Air Pollution Control Act ("Act"), Ark. Code Ann. § 8-4-101 *et seq.*

<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.

<sup>2</sup> The exact locations of the land application sites are listed in Part II, Condition 6 of the Permit.

3. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violations of a permit issued pursuant to the Act.

4. 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].

5. 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.

6. 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.”

7. DEQ issued No-Discharge Water Permit 5081-WR-1 (“Permit”) to Respondent on February 7, 2017, with an effective date of March 1, 2017, and an expiration date of February 28, 2022.

8. Part III, Condition 23 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

9. Respondent intends to utilize the sites beyond the expiration date of the current permit, February 28, 2022.

10. On March 5, 2021, and June 2, 2021, Respondent was notified that the Permit would expire on February 28, 2022, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than September 1, 2021.

11. Respondent did not submit a complete renewal application by September 1, 2021. Failure to submit the renewal application by September 1, 2021, is a violation of Part III, Condition 23 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

12. To date, Respondent has not submitted a renewal application.

### **ORDER AND AGREEMENT**

WHEREFORE, the parties stipulate and agree as follows:

1. On or before the effective date of this Order, Respondent shall submit an administratively complete permit renewal application.

2. Respondent shall comply with the existing Permit until either the effective date of the permit renewal or the effective date of the permit termination.

3. For any land application event that will occur between February 28, 2022, and the effective date of the renewal Permit, Respondent shall provide written notice to the DEQ Enforcement Branch of the land application event at least five (5) calendar days prior to the land application event.

4. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of One Thousand Dollars (\$1000.00), or one-half of the full civil penalty of Five Hundred Dollars (\$500.00) 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:

Division of Environmental Quality  
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, provided that Respondent requests such an extension in writing and provided that 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. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the 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-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 31<sup>ST</sup> DAY OF MARCH, 2021<sup>2</sup>.

  
\_\_\_\_\_  
JULIE LINCK, ADMINISTRATOR OF THE ENVIRONMENT

APPROVED AS TO FORM AND CONTENT:

City of Melbourne

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

Rhonda Halbrook  
\_\_\_\_\_  
(Typed or printed name)

TITLE: Mayor  
\_\_\_\_\_

DATE: 3-15-22

RESOLUTION NO. 2022-02

A RESOLUTION AUTHORIZING THE CITY OF MELBOURNE – LAND APPLICATION 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 MELBOURNE:**

- 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 Melbourne authorizes the Mayor to sign the proposed Consent Administrative Order.*
- 3. The City Council of the City of Melbourne 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 28<sup>th</sup> day of March, 2022

APPROVED: \_\_\_\_\_

Mayor

ATTEST: \_\_\_\_\_

Allicia Bray  
City Clerk